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Law

STATE OF ARKANSAS

ON THE SUBJECT OF

SWAMP & OVERFLOWED LANDS,

From 1850 to 1857.

ORDINANCES OF THE BOARD OF SWAMP LAND COMMISSIONERS OF A GENERAL NATURE, FROM MARCH 6, 1851, TO JULY 25, 1855; INSTRUCTIONS OF THE AUDITOR; OPINIONS OF THE SOLICITOR GENERAL OF ARKANSAS, RELATING TO SWAMP LANDS IN ARKANSAS.

Collected, prepared and published by the direction of the Governor.

LITTLE ROCK,
PRINTED BY JOHNSON & YERKES, STEAM PRESS.
1857.

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Land
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Ordinance
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ACTS OF CONGRESS.

AN ACT *to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits.*

SECTION
1. Swamp and overflowed lands unfit for cultivation granted to Arkansas.
2. Secretary of the Interior to make out list and plats of said land, and when requested, to grant a patent vesting the same in the State of Arkansas; proviso.
3. When the greater part of a sub-division is unfit for cultivation, it shall be included in said plats; if the greater part be not of that character, it shall be excluded.
4. Provisions of this act extended to other States possessing such lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided*, *however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands, by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal sub-divisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when a greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted*, That the provisions of this

act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.

APPROVED, September 28, 1850.

AN ACT *for the relief of purchasers and locators of swamp and overflowed lands.*

SECTION
1. Patents to issue for swamp lands, to purchasers and locators prior to issuing of patent to the States; 1850, ch. 84; provision for the case of a sale by a State prior to its obtaining a patent; list of such sales to be returned.
2. Indemnity to the States when they lose swamp lands under this act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the secretary of the interior, or other officer of the government of the United States, to the contrary notwithstanding: *Provided*, That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of said land to any individual or individuals, prior to the entry, sale or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the secretary of the interior: *And provided further*, That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the general land office, of the United States, a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

SEC. 2. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the commissioner of the general land office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States; and where the lands have been located by warrant or scrip, the said State or States shall be

authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid: *Provided, however*, That the said decisions of the commissioner of the general land office shall be approved by the secretary of the interior.

APPROVED, March 2, 1855.

AN ACT *for the relief of the purchasers of swamp lands from the States in which the same are situated.*

SECTION 1. Swamp and overflowed lands heretofore selected, confirmed to the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the selection of swamp and overflowed lands granted to the several States by the act of Congress, approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of the second of March, eighteen hundred and forty-nine, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the commissioner of the general land office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided, however*, That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March the second, eighteen hundred and fifty-five, which shall be, and is, hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage.

APPROVED, March 3, 1857.

STATE LAWS.

AN ACT *to provide for the reclaiming of the swamp and overflowed lands donated to this State by the United States.*

SECTION

1. The governor to appoint three persons as swamp land commissioners.
2. Said commissioners to make oath and give bonds for the faithful discharge of their duties.
3. Duties of swamp land commissioners.
4. Payment for making drains and levees —how made.
5. Commissioners to issue land scrip.
6. Contractors, how paid.
7. Board of commissioners to employ surveyor or engineer.
8. Reclaimed lands, how to be sold.
9. Report of commissioners, when and to whom made.
10. Compensation of surveyor or engineer.

SECTION

11. Compensation of commissioners.
12. Levees, where and how to be constructed.
13. Pre-emption rights acknowledged and proved.
14. Reclaimed land exempt from taxation for two years.
15. Commissioners to make out and file with the governor lists of swamp and overflowed lands, and appoint locating agents.
16. Commissioners not to sell reclaimed lands at less than fifty cents per acre.
17. Commissioners to allow compensation for levees already made.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the governor is hereby authorized and required to appoint three competent persons to act and be known as the board of swamp land commissioners, who shall hold their appointment for the term of two years, and until their successors are appointed and qualified.

SEC. 2. *Be it further enacted*, That said commissioners, before entering upon the discharge of their duties, shall take an oath before the judge of some court of record, faithfully to demean themselves in the discharge of their duties, and they shall also severally enter into bond to the State of Arkansas with security, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned, that they will faithfully and honestly discharge their duties as hereinafter prescribed.

SEC. 3. *Be it further enacted*, That it shall be the duty of said commissioners, *first*, to fix the price of the swamp and overflowed lands donated to the State of Arkansas, by the act of Congress, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28th, 1850, in their present condition, taking into consideration their locality, and the value that will be added to said lands by their reclamation, lists of which, with the valuation of each tract, or legal sub-division shall be forwarded to the governor, subject to his approval or rejection; *second*, to determine the locality, extent and dimensions of the necessary levees and drains in order to reclaim said lands; *third*, to district and classify said lands, and to let out the making of said levees and drains, by contract, to responsible persons, at a stipulated price per cubic yard, to the lowest and best bidders; *Provided*, That

the commissioners be authorized to reject all bids, even the lowest, when they consider them unreasonable.

SEC. 4. *Be it further enacted*, That the payment for making said levees and drains shall be made in the lands reclaimed or in the proceeds of the sales thereof, at the price previously fixed upon said lands by the commissioners.

SEC. 5. *Be it further enacted*, That the commissioners shall have power to issue land scrip representing quarter section tracts, in which, at his option, any contractor may demand and receive in lieu of the land in kind, payment for his work, which scrip shall be transferable by assignment, and may be located upon any of the unselected portion of said swamp and overflowed land.

SEC. 6. *Be it further enacted*, That when any contractor shall have finished his work in accordance with his contract, and shall have selected his land in payment therefor, or located his scrip in lieu thereof, as above provided, he shall furnish the numbers of such land to the commissioners, and upon the certificate of the commissioners, the governor shall execute to such contractor or his assignee, a deed for such land in due form of law.

SEC. 7. *Be it further enacted*, That the board of commissioners shall have power to employ a competent surveyor or engineer to co-operate with them in districting and classifying said lands and in determining the locality, extent, and dimensions of the levees and drains necessary to reclaim said lands, and in supervising and passing upon the work of the several contractors.

SEC. 8. *Be it further enacted*, That after the said board of commissioners shall fix the price of said lands in the present condition, taking into consideration their locality, and the value that will be added to said lands by their reclamation, they shall have power to sell any portion of the same, for cash, at not less than the price so fixed, but for as much higher price as may be obtained, and shall furnish the purchasers thereof with a certificate or certificates of purchase and payment, upon the presentation of which to the governor, he shall execute a deed therefor in due form of law, and the said commissioners may apply the proceeds of such sale to the reclaiming of said lands, as before specified.

SEC. 9. *Be it further enacted*, That said commissioners shall, on the first Monday of October, of each year, render to the governor an account of all the official transactions during the year, which he, the governor, shall communicate to the General Assembly at its next subsequent session.

SEC. 10. *Be it further enacted*, That the compensation of the surveyor or engineer shall be fixed by the board of commissioners, to be paid in the land or scrip, at his option, by the commissioners, as in case of contractors, and when he shall have selected his lands, or located his scrip and reported the numbers

thereof to the governor, he, upon the certificate of the commissioners, shall execute to him or his assignee, a deed therefor in due form of law.

SEC. 11. *Be it further enacted*, That the commissioners shall each receive, as a compensation for their services, two thousand dollars per annum, to be paid in land or scrip; and when they shall have selected their land or located their scrip, and reported the numbers thereof to the governor, he shall execute deeds therefor to them or their assignees in due form of law.

SEC. 12. *Be it further enacted*, That the proposed levees shall be constructed as near as practicable, (taking into consideration the caving of shores) to the bank of the river or other water courses, and in all cases shall follow the general course of the rivers, or other water courses, and be so located as to accomplish the largest amount of reclamation with the least injury and inconvenience to individuals.

SEC. 13. *Be it further enacted*, That all persons legally entitled by any act of Congress heretofore passed, either in their own right, or as the legal assignee of another, to right of preemption on any of said swamp and overflowed lands, or who shall reside on or who shall have improved the same, shall have the exclusive right of purchase thereof, to the extent of their claims, for the period of twelve months from and after the date of the patents issued by the United States to this State, at the price previously fixed upon the same, not to exceed one dollar and twenty-five cents per acre.

SEC. 14. *Be it further enacted*, That to encourage by all just means the progress and completion of the reclamation by offering inducements to purchasers and contractors to take up said lands; that the swamp and overflowed land shall be exempt from taxation for the term of ten years, or until said lands are reclaimed.

SEC. 15. *Be it further enacted*, That said commissioners shall proceed immediately to ascertain the swamp and overflowed lands granted to the State by the act of Congress, approved the 28th September, 1850, and shall report the same to the governor, on oath by accurate lists, whose duty it shall be to file the same in the office of the surveyor general, and to enable said commissioners to execute this duty speedily, they are hereby empowered to appoint such number of competent persons (not to exceed one for each county, that contains swamp lands) to aid them therein, who shall be entitled to receive as a compensation for their services two dollars per diem to be paid as in other cases, in land or scrip.

SEC. 16. *Be it further enacted*, That the board of commissioners shall have power to appoint such agents as they may find necessary, to consist of not more than three for any one land district, as fixed by the commissioners, to aid in the location and construction of the necessary levees and drains and in classify-

ing and districting said swamp and overflowed lands, who shall receive as a full compensation for their services, two dollars per day for each day they are actually employed, to be paid in land, scrip, or cash, by the board of commissioners, as in case of contractors.

SEC. 17. *Be it further enacted*, That nothing herein contained shall authorize said commissioners to sell any of said lands at a less price than fifty cents per acre: *Provided*, That two of the commissioners shall constitute a quorum to do business and that no member of the board shall participate in placing the value on the land in which his scrip shall be redeemed.

SEC. 18. *Be it further enacted*, That where partial levees have been made by individuals, or voluntary associations, or where such levees shall be hereafter so made, and in the judgment of said board of commissioners, such partial levees shall be considered an essential aid in their proposed system of reclamation, and the board of commissioners to adopt them as a part of their general system of reclamation, that in such cases they shall make compensation therefor, either in land or scrip, at their option.

APPROVED, January 6th, 1851.

AN ACT *supplemental to an act to provide far reclaiming the swamp and overflowed lands within this State, approved January 6th*, 1851.

SECTION
1. Board of swamp land commissioners to lay off districts.
2. Contracts for levees to be proceeded with simultaneously on both sides of any river.
3. Office and records of the board of commissioners.
4. Who may have the preference in letting contracts for levying.

SECTION
5. Board of commissioners authorized to receive indemnity from the United States for swamp lands sold by the United States, since 28th February, 1850.
6. How moneys accruing from this source shall be applied.
7. Part of section 17, of an act which this is intended to amend, repealed.

SENTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the board of swamp land commissioners shall lay off the country in which said swamp and overflowed lands lie into convenient districts, each to embrace the water courses and their confluents, whereon levees and embankments may be necessary to reclaim said lands.

SEC. 2. *Be it further enacted*, That said commissioners in letting out contracts for the making of embankments on the Arkansas river, shall let out the contracts, and proceed with the work on both sides of said river, simultaneously, so far as the same is practicable, so as to afford equal protection to the cultivators and occupants of land on either side of said river.

SEC. 3. *Be it further enacted*, That said board of swamp land commissioners shall keep an office for the transaction of busi-

ness at such points as a majority of said commissioners may designate, and it shall be their duty to convene at said place, once in every three months, and oftener if it shall be necessary for the proper dispatch of their duties, at which place the record of their joint proceedings shall be kept, and said board shall appoint a secretary and fix his compensation, to be paid as in other cases.

SEC. 4. *Be it further enacted*, That any person owning lands on the banks of any river, in any swamp and overflowed land district shall have the preference of taking the contract to levy such lands; *Provided*, He takes such contract at the lowest bid, and such person so contracting, shall have the preference to take in pay for executing his contract, any lands, swamp or overflowed, lying in the rear adjacent to his own lands.

SEC. 5. *Be it further enacted*, That the board of swamp land commissioners are hereby empowered to demand of any receiver, from the proper accounting officers of the United States, indemnity at the rate of one dollar and twenty-five cents per acre, for any swamp and overflowed lands within this State, which have been sold or disposed of by the United States, since the 28th September, 1850, or which may hereafter be sold or disposed of by the United States.

SEC. 6. *Be it further enacted*, That all moneys accruing from this source, shall be applied by the board of swamp land commissioners according to the provisions of the act which this is intended to amend.

SEC. 7. *Be it further enacted*, That the provision of section 17, of the act which this is intended to repeal, is hereby repealed, except so much thereof as limits the price of land to be sold by said board.

APPROVED, January 11th, 1851.

AN ACT *to appreciate the value of Swamp and Overflowed Lands.*

SECTION
1. Plank or stone road company to apply for permission to drain lands; commissioners to lay off and designate grade and terminus of route, beginning at the point in application; corporation entitled to all the benefits allowed by law for draining such lands, and subject to like penalties; company to cover such levee, etc., with stone or plank, and clear out obstructions 18 feet wide.
2. Act in force from and after its passage.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That it shall and may be lawful for any plank or stone road company, hereafter incorporated in pursuance of law, to file with swamp land commissioners an application to levee and drain the said lands, setting forth therein the point of beginning, the route, direction, and terminus of such plank or

stone road; and when it shall appear to the satisfaction of said commissioners, or, in their opinion, the same will reclaim or appreciate in value the lands thereof, to proceed forthwith to lay off the same, beginning at the point designated in said application; fixing the direction, the grade and terminus of the same; and in levying and draining the said route, such corporation shall be entitled to receive all the benefits, privileges and immunities, by law conferred upon contractors for levying and draining said lands, and shall be subject to like pains, penalties, limitations and restrictions; *Provided always*, That said corporation shall, within two years from and after the passage of this act, cover such levee, or embankment, or drain, with stone or plank, ten feet in width; *And provided further*, That such corporations shall clear out of such way all obstructions, to the width of eighteen feet, so as to afford a safe and convenient passage thereon.

SEC. 2. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

APPROVED, 1st January, 1853.

AN ACT *to provide for assessing and taxing reclaimed Swamp and Overflowed Lands.*

SECTION
1. Swamp or overflowed lands protected by levees or reclaimed, and sold, to be assessed for taxation.

SECTION
2. This act in force from and after its passage.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That it shall be the duty of the assessor of taxes for each county in this State, diligently to enquire and ascertain what lands sold as swamp and overflowed lands under the provisions of an act entitled "an act to provide for the reclaiming of the swamp and overflowed lands donated to this State by the United States, approved January 6th, 1851," confirmed by the general government to the State of Arkansas, have been protected from overflow by levees, or are, or have been, by other means reclaimed; and to assess the same for taxation.

SEC. 2. *Be it further enacted*, That this act take effect and be in force from and after its passage.

APPROVED, 10th January, 1853.

AN ACT *amendatory of existing laws regulating the Landed Interests of this State.*

SECTION

1. Landed interest of the State to be controlled as hereinafter provided.
2. Auditor to keep in his office books and plats of lands taken up by the State, of the 500,000 acre grant; also of the seminary lands; also of saline lands; also of swamp and overflowed lands.
3. Auditor to make out for each township in which are any of the above described lands, township maps, and classify them, and deliver the same to the land agents.
4. Establishes five offices for sale and entry of the lands of this State.
5. General Assembly at present session, and once every two years thereafter, to elect agent for each of the districts, who shall take oath to faithfully discharge his duty, and give bond to the State, not less than $10,000.
6. Land agent possess like powers and governed by same rules and requirements of law, which control State agents in sale of the 500,000 acre grant; and in disposition of seminary lands by such laws as may be enacted.
7. Land agents have power and authority to sell swamp and overflowed lands.
8. Land agents furnished with the maps and plats, shall advertise the swamp and overflowed lands in their respective districts for sale by posting hand bills at the door of the court house, and by publication in two newspapers in the State for six weeks before day of sale.
9. Lands to be offered in quarter and half sections.
10. Heads of families, settlers upon swamp lands, have pre-emption right; pre-emption only to actual settler or improver; failing to enter by day of sale, such right lost, and land to be sold; agents to notify pre-emptors of their right.
11. Persons making settlement after day of sale on unsold land, and within 30 days filing with agent a declaration for pre-emption, shall be entitled thereto for 12 months, and to enter, in preference to others at minimum price.
12. Lands not sold at public sale may be entered at any time thereafter; agent to give certificate of entry.
13. On day of sale agent to employ a clerk and pay out of proceeds of sale.

SECTION

14. Salary of land agents, $800 each, to be paid out of lands sold.
15. Land agents to enter in a book each location or purchase, specify tract sold, to whom, the price, and how paid for.
16. Each agent to make a report to the auditor every 6 months, and make settlement with auditor at the end of each 6 months; and pay to treasurer all money and scrip chargeable to him.
17. Agent in default, attorney to move circuit court for judgment against said securities for amount in default; court shall render judgment and 12½ per cent. damages, and 6 per cent. interest, in name of the State and for use of fund to which retained amount belonged.
18. Agent in default deemed guilty of misdemeanor, and on conviction fined not less than $50 nor more than $500 for use of State. Governor may dismiss defaulting agent.
19. In case of vacancy, governor to appoint successor, to hold office till successor elected, to give bond and security under same liabilities as those elected.
20. Auditor to furnish land agents with forms of entries, locations of entry.
21. Lands sold for scrip, scrip to be transferred to State, attested by land agents; such scrip equivalent to amount of money therein called for.
22. Auditor to prepare patents for land sold, patent signed by governor and recorded by auditor; fee $1 00.
23. Auditor entitled to fee of $1 00 for all certified transcript, except to other officers of state in official business.
24. Certified transcripts from the office of the auditor or of land agents, to be received in evidence in courts of this State.
25. General Assembly to elect every two years, three swamp land commissioners, who shall take oath and give bond to the State, approved by the governor, in $20,000 for the faithful discharge of their duties.
26. Swamp land commissioners to divide the State into five districts.
27. Commissioners at regular meeting to adjust accounts for levee or other work, and give certified statement of the amount, upon presentation of which, auditor to issue warrant, which the treasurer shall pay out of money from sale of swamp or overflowed lands; in case no such funds

SECTION
are in treasury, then, scrip to issue, receivable for such lands.
28. Such scrip to be numbered, and the warrant numbered to correspond, with the word "satisfied" written across the face.
29. Accounts of swamp land commissioners to be audited by the auditor; commissioner failing to make returns to the office of auditor or making false returns, deemed guilty of misdemeanor, and on conviction fined not more than $500, and imprisoned not less than one month, nor more than one year.
30. Commissioners may employ engineers to lay out levees, etc.
31. Present commmissioners to file with auditor by 1st April next, an accurate list of swamp and overflowed lands disposed of by them with a proper description of same, to whom sold, class of each tract, etc.
32. Office of commissioners located at Helena, secretary of the board to give bond in $10,000; commissioners may change location of office to a point convenient to greatest amount or work.
33. On 1st Monday in January commissioners to transmit to the auditor a list of lands reclaimed, that the same may be taxed.
34. Auditor to transmit said list to sheriffs of counties in which are said lands, who shall assess the same.
35. Cutting, destroying or removing timber from such lands, subjects trespasser to fine in double the value, and imprisonment not less than two nor more than 20 days; not to apply to settler on said lands, when used for farming purposes.
36. Destroying or injuring levees, subjects trespasser to indictment in circuit court, and on conviction, to imprisonment not less than one year, and payment of damages, this and the preceding section to be given in charge to grand juries throughout the State.
37. Pre-emptor to make proof of *bona fide* settlement, before land agent or justice of the piece, by two witnesses.

SECTION
38. Act not to alter or change existing laws until election of officers herein provided for, and until the auditor shall furnish the land agents with the maps and plats required.
39. Persons having entered swamp or overflowed lands at the U. S. land office, to have exclusive right for 12 months to purchase the same at prices fixed by commissioners.
40. Levee contractors to have right of way, shall give bond and security for performance of contract, and pay damages to the State or individuals for non-performance; owners of land dissatisfied with location of levee, to notify commissioners of intention to claim damages; commissioner to apply to sheriff for a jury, who shall be disinterested, and take oath to impartially view land and assess damages, verdict entered on back of inquisition, and filed in clerk's office of circuit court, and bar both parties from an appeal; if the jury find for owner, owner shall have credit for damages, and proper officer to issue scrip for the same, to be taken in payment for swamp and overflowed lands.
41. Commissioners to review levee now or hereafter constructed, and if any levee requires raising, cause the same to be done so as to raise the levee 30 inches above high water mark, and make new levees where the old is washed away.
42. Commissioners to make cut offs; no cut-off to throw Arkansas river from the town of Pine Bluff; any person injured by cut-off may recover damages as hereinbefore provided.
43. Books, maps and charts of swamp lands to be paid for out of the swamp land fund; and expenses relating to saline, seminary and improvement land paid out of their respective funds.
44. Scrip to be located in the district where the work was done; no scrip shall be floated to another district till all work necessary for redemption of land is done.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the entire landed interest of this State shall hereafter be controlled and managed as hereinafter provided.

SEC. 2. *Be it further enacted*, That the auditor of the State shall procure and keep in his office a well bound set of books and correct plats of all the lands taken up by the State under the act of Congress donating 500,000 acres of land to the State, for the purpose of internal improvement. He shall also keep

well bound books and correct plats of all the seminary lands granted to the territory, now State of Arkansas, by act of Congress, approved second day of March, 1827. He shall also keep well bound books and correct plats of all the lands belonging to the State under the designation of "Saline lands." He shall also keep well bound books and correct plats of all the lands granted to the State by act of Congress, approved 28th September, 1850, under the appellation of "Swamp and Overflowed lands."

SEC. 3. The auditor shall make out for each township in this State, in which there are any of the lands above described, township maps, in which he shall carefully class the internal improvement lands, seminary lands, saline lands and swamp and overflowed lands; each description making a class to itself, and to be discriminated from the other in such maps or plats; which plats or maps shall be furnished by the auditor to the land agents of the several districts hereinafter provided for.

SEC. 4. That there shall be established for the sale and entry of the lands of this State, as enumerated in section two, five offices, to-wit: one at Dardanelle, one at Jacksonport, one at Washington, one at Helena, and one at Pine Bluff.

SEC. 5. The General Assembly shall, at its present session, and every two years thereafter, elect one competent person to fill each of the offices named in section four, who shall act and be known as land agent, and who shall keep his office at the point in the district, for which he shall have been elected, designated in section four, and who, before entering upon the discharge of his duties, shall take an oath before some officer qualified to administer oaths, that he will well and truly discharge the duties of his office, and that he will not directly or indirectly, be engaged in the purchase of the lands belonging to the State to be sold by him during his continuance in office; and shall also enter into bond to the State of Arkansas, with security, to be approved by the governor, in a sum not less than ten thousand dollars, conditioned that he will well and truly discharge the duties of his office, and account for and pay over to the State treasurer all moneys and land scrip coming to his hands as such land agent.

SEC. 6. That after the said land agents shall have been furnished with the books, maps or plats, as hereinbefore provided for, they shall possess the like power and authority, be governed by the same rules and restrictions, and be guided by the same requirement of law which now control the action of the State land agent in the sale and disposition of the 500,000 acres, and in the sale and disposition of the seminary lands, and shall be controlled by such laws as may be enacted in regard to the sale of the saline lands, in the event they shall be ordered to be sold; and it shall be the duty of the said State land agents, pursuant to the provisions of the laws now governing the actions of the

late State land agent, in such cases, and so far as they can be made applicable (under the change of office herein provided for) and in pursuance to such laws as hereafter may be enacted for that purpose, to sell any or all of the lands belonging to the State as internal improvement lands, or saline lands, situated in their respective districts.

SEC. 7. And the said land agents shall have full power and authority to sell any of the lands granted by Congress to this State under the designation of swamp and overflowed lands; but in making such sales shall be governed by the rules, provisions and regulations now in force and hereinafter provided, or which may exist by law at the time of such sale.

SEC. 8. That the said State land agents, upon receiving the maps and plats herein provided for, shall immediately and without delay proceed to advertise the swamp and overflowed lands of their respective districts for sale, taking the books and maps furnished by the auditor for their guides with regard to what lands are so owned by the State, which advertisement shall be by handbills, set up at the court house door of each county of their respective districts, and shall also be published in two newspapers of the State, weekly for six weeks, the last insertion to be at least thirty days before the day fixed in said advertisement for the time of sale, and on the day and at the place specified in said notice, which place shall be the offices of the respective agents, they shall proceed to offer the said lands for sale to the highest bidder for cash, or swamp land scrip; *Provided*, That no lands shall be sold at such public sale for a less price than one dollar and twenty-five cents per acre. Such sales shall continue from day to day, until all the swamp and overflowed lands shall have been sold, or offered for sale by the respective agents.

SEC. 9. That at such sale the lands shall be offered in quarter sections and half quarter sections, to suit purchasers and enhance the value thereof.

SEC. 10. That every head of a family who may hereafter settle upon, or who is now a settler upon any of the undisposed swamp and overflowed lands, shall have a pre-emption right thereto, in exclusion of all persons whatsoever up to the day of such sale, and shall have a right to enter any of the legal subdivisions as above recited; *Provided*, That no right under this section shall vest in any individual except an actual settler upon a portion of the lands claimed, or whose improvement may extend from his own lands to a portion of the swamp and overflowed lands. But if such settler fail to make such entry before the day set apart for such sale, then the right of entry shall be lost and the lands offered for sale to the highest bidder, and it is hereby made the duty of the land agents, in their advertisements, to notify pre-emptors of their rights under this act.

SEC. 11. That any head of a family, or other free white citi-

zen of the State over the age of twenty-one years, who shall make a settlement on any of the swamp and overflowed land after the day of sale, which remain unsold, and who shall within thirty days after the time of such settlement file their declaration in writing, setting forth the fact that they claim said tract of land to be described in the declaration, as a pre-emption right under the provisions of this act, with the land agent of the district in which such lands are, shall be entitled to a pre-emption right for the term of twelve months after the date of such settlement, and shall have a preference right to enter the same in any legal sub-division as above designated, not to exceed one hundred and sixty acres, at the minimum value of all swamp and overflowed lands which are not sold at public sale, which is hereby declared to be seventy-five cents per acre for all lands within six miles of a navigable water course, and fifty cents per acre for all lands being more than six miles from a navigable water course.

SEC. 12. That all lands not sold at the time appointed for such public sale, shall be liable to be entered at any time thereafter for swamp land scrip, at the rates herein fixed, and the land agent shall give to the purchaser a certificate of such entry, in which he shall specify the lands entered and the amount received for such entry, and shall also note such entry on his township maps and in his book to be kept for that purpose.

SEC. 13. That upon the day of public sale, the agent may employ a clerk to keep the accounts of sale, who shall be paid by the agent employing him, and he shall take duplicate receipts therefor, which payment shall be made out of the proceeds of the sale, and the clerk's receipt shall be a good voucher to the agent in his settlement with the auditor.

SEC. 14. That each of the land agents herein provided for shall receive in full compensation for their salary, the sum of eight hundred dollars, to be paid equally out of the different lands sold, and in proportion to the amount of each class of lands controlled by them.

SEC. 15. In addition to the memorandum of sales or entry of lands to be made upon the maps or plats furnished by the auditor, the several land agents shall each procure a well bound book, in which they shall enter each location or purchase of lands, and in which they shall specify the tract sold, to whom sold, and date of such sale, and the price and how paid for.

SEC. 16. That each of the state land agents shall make out a detailed report of the transactions of his office at the end of every six months, which report shall be transmitted to the auditor; and each land agent shall, immediately after the expiration of each period of six months, make settlement with the auditor, in which settlement his account shall be audited, and he shall forthwith pay over to the treasurer of the state the amount of money and land scrip which may be found chargeable against

him, and file the treasurer's receipt for the same in the auditor's office.

SEC. 17. That if at any time any land agent shall be in default, the auditor shall transmit a certified statement thereof to the attorney for the State, in the circuit in which the land agent resides, and it shall be the duty of the prosecuting attorney, at the first term of the circuit court in the county of said agent, after he shall have received such notice, to move such court for judgment against such defaulting agent for the amount which he shall be in arrears, together with twelve and one-half per centum damages thereon, and the court shall thereupon render judgment against such land agent and his securities for the amount shown to be due, together with the twelve and one-half per centum damages, and also for six per centum interest per annum thereon; which judgment shall be in the name of the State and for the use of the fund to which the proceeds retained belonged; and in the hearing and determining of all such matters, the parties, or their attorney, may introduce in evidence the said statement of the auditor, and any entries in the land agent's books, and may introduce such other proof as shall be admissible under the general rules of evidence.

SEC. 18. That if at any time any land agent shall be in default, he shall be deemed guilty of a high misdemeanor, and upon conviction thereof, by indictment or presentment, shall be fined in any sum not less than fifty nor more than five hundred dollars, for the use of the State. The auditor, in addition to the statement to be transmitted to the prosecuting attorney, shall also file with the Governor of the State a written statement, showing the existence of such defalcation; and the Governor may therefor dismiss such defaulting officer from his office.

SEC. 19. That in all cases of vacancy by death, removal or resignation of the land agents, or swamp land commissioners, the Governor shall appoint a successor, who shall hold his office until the next session of the General Assembly thereafter, and until his successor shall be elected and qualified; and such agent or commissioner so appointed shall give the same bond and securities, take the same oath, and he and his securities be under the same liabilities that are provided for those elected.

SEC. 20. That the auditor shall furnish the several land agents with forms of entries, locations and certificates of entry, which forms the agents shall pursue in the disposal of the lands, and shall always discriminate the class the lands belong to, which were sold.

SEC. 21. That in all purchases of land for scrip, the owner of the scrip shall transfer the same to the State, which transfer shall be in writing upon the back of the scrip and shall be attested by the land agent; and the scrip so transferred, shall be

equivalent to the amount of money therein called for on settlement by the land agent with the auditor.

SEC. 22. It shall be the duty of the auditor to prepare patents for all lands sold by the several land agents, after the same shall have been paid for, which patents with other evidences of payment shall be submitted to the Governor for his signature; and all patents when signed by the Governor shall be recorded by the auditor in a book to be by him kept for that purpose, for which recording he shall be entitled to a fee of one dollar, to be paid by the patentee.

SEC. 23. The auditor shall also be entitled to a fee of one dollar for each certified transcript from his office, payable by the person who shall desire the same; *Provided*, That this section shall not apply to transcripts needed by other officers of this State in the course of official business.

SEC. 24. That all certified transcripts from the office of the auditor, and all certified transcripts from the office of any one of the land agents, shall be received in evidence of the existence of the records of which the transcript is a copy, without further authenticity, in all matters pending in any of the courts of this State.

SEC. 25. That the present General Assembly during its session and every two years thereafter, shall elect three competent persons to be known as swamp land commissioners, who, before entering upon their duties shall take an oath before some officer qualified to administer oaths, that they will well and truly discharge the duties of their office, and shall also enter into bond to the State of Arkansas, with security, to be approved by the Governor, in a sum not less than twenty thousand dollars, conditioned that they will well and truly discharge the duties of their office; and it shall be the duty of the said commissioners to keep well bound books, in which shall be recorded all contracts and agreements with contractors and all certificates which they may give upon the completion of any contract; and they shall receive for their services the like sum as is now paid to the present swamp land commissioners.

SEC. 26. That it shall be the duty of the swamp land commissioners to divide the State into five convenient districts, having as near as may be, the same quantity of swamp land in each, which districts shall be laid off with a view to the convenience of business from the offices hereinbefore located for the said five districts.

SEC. 27. That said board of swamp land commissioners, at their regular meeting as now provided by law, shall carefully examine, audit and adjust all accounts for levee or other work properly due from the swamp land fund, and give to the person or persons, to whom such account is due a certified statement of the amount and for what service the same is due, upon the presentation of which to the auditor, he shall issue a warrant on the treasurer, who shall pay the same out of any money in the trea-

sury arising from the sale of swamp and overflowed lands, and if there be no money in the treasury arising from this source, the treasurer shall issue swamp land scrip to the holder in such denominations as may be desired, not less than twenty dollars, for the amount so certified by the commissioners, which scrip shall be receivable in payment for swamp lands at public sale, or at private entry.

SEC. 28. Such scrip when issued shall be recorded by the treasurer and numbered, and the warrant upon which it was issued shall be numbered with the corresponding number, and the word "satisfied" shall be written across its face, with the date of its satisfaction, by the treasurer, who shall keep such warrant in his office as evidence and authority to issue such scrip.

SEC. 29. That the said swamp land commissioners shall have the accounts of their office audited annually by the auditor of public accounts, and if said swamp land commissioners fail to make return of their transactions to the office of the auditor, or if they wilfully make false returns they shall be deemed guilty of a high misdemeanor, and upon conviction by presentment or indictment shall be fined in any sum not more than five hundred dollars, and imprisoned not less than one month nor more than one year.

SEC. 30. That said swamp land commissioners shall have the power and authority to employ, whenever the necessities of the State require it, one or more engineers to superintend the laying out of levees, cut-offs, drains, and soforth.

SEC. 31. That it shall be the duty of the present swamp land commissioners to make out and file in the auditor's office, on or before the first day of April next, an accurate list and description by numbers and areas, of all swamp and overflowed lands disposed of by them; showing to whom, for what and when each tract of land was sold, to which class each tract belonged, the name of the person who signed the certificate of purchase, the number of the certificate, the number of acres sold for cash, and the number of acres of each class otherwise disposed of.

SEC. 32. That the office of the board of swamp land commissioners shall be located at Helena, at which place the commissioners shall meet as now provided for, and discharge the duties imposed upon them by the act which this is intended to amend. That the secretary of said board shall take an oath of office and enter into bond to the State of Arkansas in a sum not less than ten thousand dollars; and the said swamp land commissioners, or a majority of them, shall have the power and right to change the location of the office of the board of swamp land commissioners to such point as may be most convenient to the place at which the largest amount of work is being done.

SEC. 33. It shall be the duty of the swamp land commissioners on the first Monday in January in each year, to make out and transmit to the auditor of public accounts, an accurate list of all swamp and overflowed lands reclaimed, in order that the same

may be taxed according to the provisions of the fourteenth section of the act, approved sixth January, 1851.

SEC. 34. It shall be the duty of the auditor to transmit to the sheriff of each county where any of said reclaimed lands a copy of the list of reclaimed lands furnished him as above provided, by the swamp land commissioners. Such sheriff shall assess such lands as in other cases.

SEC. 35. Any person or persons who may cut, destroy or remove any timber now standing on any of the swamp and overflowed lands granted by Congress to this State shall be subject to indictment, and on conviction thereof shall be fined the full value of the timber cut, destroyed or carried away, and be imprisoned not less than two, nor more than twenty days; *Provided*, That any person or persons residing on such swamp or overflowed lands, shall have the right to cut any timber growing on the tract which he may occupy for his own use for building or farming purposes.

SEC. 36. That any person or persons who shall destroy or materially injure any part of the levees now constructed, or that may be hereafter constructed, shall be subject to indictment in the circuit court of the proper county, and on conviction thereof, shall be imprisoned not less than one year, and pay all damages that may accrue, and that this provision, with the one next above, shall be given specially in charge to the grand jury by the court at the commencement of each and every circuit court throughout the State where there may be any of such swamp and overflowed lands situate.

SEC. 37. That after the pre-emptor has filed his declaration, as required by section ten of this act, he shall make proof before the swamp land agent of the proper district, or before some justice of the peace, by two disinterested witnesses, that he, or she, is an actual and bona fide settler, as provided for in section ten, subject to an appeal to the board of swamp land commissioners.

SEC. 38. That nothing in this act shall be construed so as to alter or change existing laws until the election and qualification of the officers herein provided for, and until the auditor shall make out and furnish the several land agents herein provided to be elected for the several land districts, with the maps and plats as required to be furnished by him as aforesaid, which he shall furnish without delay.

SEC. 39. That all persons, being citizens of this State, who have entered at the United States land offices any part of the swamp and overflowed lands, shall have the exclusive right of purchase thereof for the term of twelve months from and after the passage of this act, at the price fixed upon said lands by the swamp land commissioners.

SEC. 40. That all contractors for erecting levees shall have the right of way through the lands of (or) fields where the levees are located by the commissioners, and the contractors shall give bond

and security conditioned for the faithful execution of the contract, and shall be liable to pay damages to the use of the State, and also to any citizen who may be injured by the non-performance of the contract, according to the condition of the bond aforesaid; but if the proprietor or proprietors of such lands or fields should be dissatisfied with the location of such levees through his, her or their lands or fields, and shall, on the location of such levees as aforesaid, give to the commissioners notice of such dissatisfaction, and of their determination to claim such damages as the location of such levees may occasion, then, and in that case, the said commissioners shall forthwith apply to the sheriff of the proper county, who shall forthwith proceed to summon a jury of twelve freeholders of such county, in nowise akin to said parties or in anywise interested in said lands or fields through which said levees may be designed to pass, which said jury shall assemble at the place intended to be viewed, and shall take an oath, to be administered by the sheriff, that they will faithfully and impartially view the lands or fields of such person on whose land such levee may be located, and will faithfully and impartially assess the damages which such levee is calculated to occasion such lands; and the said verdict shall be entered upon the back of the inquisition, and shall, by such sheriff be filed in the office of the clerk of the circuit court of the proper county, and the inquisition and verdict so returned shall be an effectual bar to both parties without appeal; and if such jury should find damages for such owner or proprietor, then, and in that case, such owner shall have a credit for so much, for which, when properly certified by the clerk of the proper court, shall be sufficient authority to the proper officer to issue scrip for the same, and when so issued, the same shall be taken and received in payment of any of the swamp and overflowed lands in this State.

SEC. 41. That the swamp land commissioners shall review the levees now or hereafter constructed, and if any of said levees have been washed away, or have caved in, or if any levee requires to be raised higher in order to make the same thirty inches above high water mark, then, in such cases, the swamp land commissioners shall let out and cause to be constructed such further or other, on said levees, as shall be necessary to raise the same thirty inches above all high water marks, and any new levee made where other levees have been washed away, and the same to locate in the place adjudged to be most proper.

SEC. 42. That the swamp land commissioners shall have power to make cut-offs on streams which require to be straightened, and in all cases were said cut-offs are intended to be made on any creek, stream or river, the swamp land commissioners shall commence at the mouth of said cut-off, and work up stream; *Provided*, No cut-off shall be made on the Arkansas river which will throw the Arkansas river from the town of Pine Bluff; *And provided further*, That any and all persons who may be injured by any cut-off shall recover damages from the swamp land fund

in the same manner that is hereinbefore provided for the recovery of damages sustained by reason of locating levees through fields and lands.

SEC. 43. That all the books, maps and plats necessary for the swamp land, as well as all other expenses that will be incurred relating to the swamp and overflowed lands, shall be paid out of the swamp land fund, and that all expenses relating to the saline lands, the seminary lands, or the internal improvement lands, shall be paid out of the respective fund for which such expenses were incurred.

SEC. 44. That in all cases of contracts hereafter to be made, the scrip issuing thereon shall be located in the district where the work was done, and that no scrip issued for work in one district shall be floated to another until all the work that is practicable and necessary for the redemption of the swamp and overflowed lands in such district shall have been completed.

APPROVED, 12th January, 1853.

AN ACT *supplemental to an act entitled "an act to amend the existing laws in regard to the Landed Interest of this State."*

SECTION
1. Treasurer of State entitled to ten cents per 100 words for transcribing and recording scrip or warrants.

SECTION
2. This act in force from its passage.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the treasurer of the state shall be entitled to a fee of ten cents for every hundred words for transcribing and recording the scrip or warrants required of him in the act to which this is a supplement.

SEC. 2. *Be it further enacted*, That this act be in force from and after its passage.

APPROVED, 12th January, 1853.

AN ACT *to repeal the fourteenth section of an act entitled "an act to provide for the reclaiming of the swamp and overflowed lands donated to this State by the United States," approved sixth January, A. D. one thousand, eight hundred and fifty-one, and for other purposes.*

SECTION
1. Repeals 14th section of an act to provide for the reclaiming of swamp and overflowed lands, approved January 6th, 1851.
2. All swamp and overflowed lands, confirmed or that may be hereafter confirmed to the State, and sold or that may be hereafter sold, to be subject to taxation.
3. Auditor to furnish assessors of taxes a descriptive list of swamp and overflowed lands in each county subject to be taxed under this act.
4. Assessor to enter for taxation the lands embraced in the lists so furnished him, for each year next succeeding the date of the sale or location.
5. Conflicting laws repealed, and this act to take effect from its passage.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the fourteenth section of an act to provide for the reclaiming of the swamp and overflowed lands, donated to this State by the United States, approved January sixth, one thousand eight hundred and fifty-one, be and the same is hereby repealed.

SEC. 2. *Be it further enacted*, That all swamp and overflowed lands, which have been confirmed to the State of Arkansas, or that may hereafter be confirmed to said State, and which have been heretofore sold or located, or that may hereafter be sold or located shall be subject to taxation in the same manner as other lands are taxed under existing laws of this State.

SEC. 3. *Be it further enacted*, That it shall be the duty of the auditor in the month of January, A. D. one thousand eight hundred and fifty-five, or as soon thereafter as practicable to furnish each assessor of taxes in each county in this State, a descriptive list of all the swamp and overflowed lands in each county, that have been sold, located, or otherwise disposed of, under the laws of this State; showing to whom sold or by whom located, and the date of the sale or location; *Provided*, That no lands which have not been confirmed and certified to this State by the United States, shall be embraced in said list.

SEC. 4. *Be it further enacted*, That it shall be the duty of the assessor, to whom such list is furnished, immediately to enter and list the lands embraced in such list, for taxation, for each year next succeeding the date of the sale or location, in the same manner all other taxable property is required to be listed and assessed for taxation, under the existing laws of this State, and to proceed as the law directs to collect said taxes so assessed, as in all other cases.

SEC. 5. *Be it further enacted*, That all laws and parts of laws, in conflict with the provisions of this act, be and the same are hereby repealed; and that this act take effect and be in force from and after its passage.

APPROVED, 11th January, 1855.

AN ACT *to amend section eleven of an act entitled an act amendatory of existing laws, regulating the landed interest of this State, approved January twelfth, eighteen hundred and fifty-three.*

SECTION
1. Right of pre-emption to swamp and overflowed lands; who to be entitled to it; how to proceed to avail of it; right of pre-emption to how many acres.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That any head of a family, or other free white citizen of the State of Arkansas, over the age of twenty-one years, who has an improvement on any of the swamp and overflowed lands, who shall within sixty days after such lands are advertised by the land agent of the proper district, under the provisions of the act approved twenty-seventh of November, eighteen hundred and fifty-four, after such lands shall have been reported by the local agents, or if the same is now subject to entry, within sixty days from and after the passage of this act, file his or her declaration in writing, setting forth the fact that he or she claims said tract of land, to be described in such declaration, as a pre-emption right under the provisions of this act, with the land agent of the district in which such lands are, shall be entitled to a pre-emption right for the term of twelve months from and after the time of filing said declaration, and shall have a preference right to enter the same in any legal subdivision, not to exceed one hundred and sixty acres, at the minimum price of such land, provided that no person who has already obtained a pre-emption of one hundred and sixty acres of such lands, under existing or previous laws, shall be entitled to the benefits of this act, and any person who has already obtained a pre-emption to a less quantity than one hundred and sixty acres, shall only be entitled to a pre-emption to such quantity which, together with the pre-emption already obtained, will amount to one hundred and sixty acres.

APPROVED, 16th January, 1855.

AN ACT *to enable the Governor to make deeds to swamp and overflowed lands, after such land shall have been patented by the United States to the State of Arkansas.*

SECTION
1. Persons holding certificates granted under authority of swamp land commissioners, to present them to the proper land agent, and if the lands designated in them have been confirmed to the State, and certified in all respects correct, land agent to issue a patent certificate in lieu thereof to holder; cases where assignment has been made provided for; Governor to execute deeds upon all patent certificates; no deed to be made to any unconfirmed swamp and overflowed land.
2. Where only part of land in original certificate has been confirmed, land agent to issue patent certificate for the confirmed tracts, and for unconfirmed tracts to issue a certificate to auditor, and auditor to issue his warrant to the owner thereof for amount of scrip he paid for the unconfirmed lands.
3. Course to be pursued where land has been twice paid for, or more paid than was due, or not enough paid; land agent to keep record of his acts under this law.
4. Land agents to return original certificates to the anditor, who is to examine them and cancel and file them with the treasurer.
5. Course to be pursued in cases of conflicting claims to any swamp lands.
6. This act to be in force from passage, and conflicting laws repealed.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That all persons holding any certificate or certificates which may have been issued by the swamp land commissioners, or any one of said commissioners, or by any one acting under and by authority of any such swamp land commissioners, shall present such certificate or certificates, granted as aforesaid, for any tract or tracts of swamp and overflowed lands, to the land agent of the proper district, for examination; and should the said land agent find, by examination of the records of his office, that the tract or tracts designated in said certificate, so presented, has been confirmed to the State as part of the grant of swamp and overflowed lands, and that the proper number of acres has been paid for, and there is no conflicting claim thereto, to issue a patent certificate to and in favor of the original holder of the surrendered certificate, or to his legal representative. Should the original holder or owner of such certificate be dead, except in cases in which any such original certificate may have been assigned, and in that event the land agent shall issue his patent certificate in favor of the last assignee of such original certificate, as such assignee, or to the legal representative of such last assignee, should the last assignee be dead; and the Governor shall be authorized, and it is hereby declared to be legal and valid, for the Governor to execute deeds upon all such patent certificates, which may be so issued, and full title in fee shall vest in such assignee, assignees, or the legal representative, as effectually as if he or they had been the original purchaser or locator of such land; *Provided*, That no deed shall be made by the Governor, for any swamp or overflowed land, until after the same shall have been patented to the State of Arkansas.

SEC. 2. That should there be only part of the land embraced in such original certificate confirmed to the State, the land agent

shall issue a patent certificate for that which has been or may have been confirmed to the State, and shall grant to the holder of said original certificate a certificate to the auditor, designating the tract or tracts not confirmed, but embraced in such original certificate, and setting forth how much had been paid for such unconfirmed lands; and the auditor, upon the presentation of such certificate of the land agent, shall issue a warrant to the owner thereof, for the amount so erroneously paid, and the amount of such warrant shall be paid, as in other cases, out of the swamp land fund.

SEC. 3. That a similar course shall be pursued by said land agents, in all cases where land has been twice paid for, or where more has been paid than was properly due, in consequence of erroneous estimates of the areas of any such lands, and in case a sufficient amount may not have been paid, the land agent, before granting any patent certificate, shall require the payment of the balance due, according to the area of the tract; and the land agent shall keep proper records of all his acts under this law, and shall register all lands in his books for which he grants patent certificates, and show on said records when and to whom such certificates were granted.

SEC. 4. The original certificates taken up by the land agents shall be returned to the auditor, when the land agents make settlements, and shall be examined by the auditor; and after adjusting the accounts of the land agents connected therewith, the said original certificates shall be canceled and filed in the office of the State treasurer.

SEC. 5. That when there are conflicting claims to such lands, the land agents may administer oaths, and shall, upon proper notice to the parties, and upon hearing testimony and statements under oath, decide to whom the patent certificate shall be issued, in accordance with the law on the subject, and shall issue the patent certificate accordingly; and should the other party, whose claim is not allowed to such land, desire a certificate to the auditor, upon which to have the amount paid by him upon the land refunded, the land agent shall issue the necessary certificate to enable him to do so, upon his surrendering such original certificate to the land agent.

SEC. 6. That this act shall take effect and be in force from and after its passage, and all laws and parts of laws contrary to this act be and are hereby repealed.

APPROVED, 20th January, 1855.

AN ACT—*Concerning the Swamp and Overflowed Lands.*

SECTION
1. Swamp land commissioners to proceed,
1st. To examine personally all work done towards reclaiming the swamp lands, and where more work is needed to preserve that already commenced, to have it done.
2d. To ascertain amount of lands the State has received, and the further amount entitled to.
3d. To ascertain amount of scrip issued, quantity of land located and liable to be located with it, and the quantity of land reclaimed.
4th. To ascertain, by personal examination, quantity of land susceptible of reclamation, which remains to the State as an unexpended balance.
SECTION
5th. By personal examination to ascertain what further work is necessary, etc.
6th. If necessary, to let out contracts to complete the work of reclamation; no more contracts to be let in any district than the unappropriated lands will pay for; to locate swamp land office.
2. Engineer, resident of the State, to give bond with security.
3. Resolution suspending swamp land transactions repealed.
4. All scrip in the commissioner's office at Helena, deposited by first commissioners, to be sent to State Treasurer; act in force from passage.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the swamp land commissioners shall proceed,

1st. By personal examination of the several levees and drains which have already been made or begun, for the purpose of reclaiming the swamp and overflowed lands, to ascertain how far they have answered the purpose for which they were undertaken, and to determine wherein they require additional work, to complete them severally, or to connect them one with another, in order to save the original work from destruction or injury, or to make it useful, and when the necessary information shall thus have been obtained by them, they shall proceed further forthwith, to have the necessary work done in the manner already prescribed by law.

2d. To ascertain and have determined the exact amount of swamp and overflowed lands which the State has already received, and to which she is further entitled under the congressional grant.

3d. To ascertain the exact amount of scrip which has been issued, together with the quantity of land already located and liable to be located with it, as well as the quantity of land which, upon approximate estimation, has been reclaimed in whole or in part by the work already done.

4th. By personal examination, to ascertain the probable quantity of lands already reclaimed, or susceptible of reclamation, which, as an unexpended balance, belongs to the State, and is applicable to works of improvement.

5th. Upon further personal examination, to determine what other levees and drains may be necessary and proper, to carry on the work of reclaiming the swamp and overflowed lands, with a view of its ultimate completion, as far as the means of the State, to be derived from the use of said lands, will probably be deemed sufficient for the purpose. And,

6th. After they shall have obtained the information, and sat-

isfy themselves upon the several points herein specified, and upon such others as they may deem useful, said commissioners shall proceed further, if in their judgment it shall be necessary and proper to let out in the manner now prescribed by law, the work of making other levees and drains; *Provided*, That said commissioners shall not contract for more work for the reclamation of such swamp lands, than the unappropriated swamp land in such a district will pay for; *And provided furthermore*, That said board of commissioners shall have power to locate their office at such point in this State as may meet their convenience, which shall remain for the space of two years.

SEC. 2. That no engineer shall enter upon the discharge of his duties as such, without first having executed bond with ample security, resident in this State, and made payable to the State, for the faithful performance of his duties, which bond and security shall be approved by the said board of commissioners, and be filed in the office of the secretary of State.

SEC. 3. *Be it further enacted*, That the joint resolution passed at the present session of the General Assembly, suspending swamp land transactions until further provided for, by the General Assembly, be and the same is hereby repealed.

SEC. 4. That all the scrip and money in the office of the commissioners at Helena, which were taken in and deposited there by the first board of commissioners, (if any there be,) shall be sent to the treasury at Little Rock; and that this act be in force from and after its passage.

APPROVED, 22d December, 1855.

Resolved by the General Assembly of the State of Arkansas, That from and after the passage of this resolution, the present board of swamp land commissioners shall not let any more levee-work, drains or ditches, or have any control of any matter pertaining to the swamp and overflowed lands, donated to this State, further than to receive and pay for the work already contracted for, in the manner now provided by law, until authorized by further legislative action.

APPROVED, 16th January, 1854.

Resolved by the General Assembly of the State of Arkansas, That a joint committee be raised, three of the House and three of the Senate, whose duty it shall be to inquire into all the facts in relation to the manner in which the laws for the reclamation of swamp and overflowed lands in this State have been adminis-

tered during the last three years, and especially whether the commissioners have entered into any contract with Mr. Thomas Peters, or any one else, for the reclamation of all the said lands in said State, and, if so, to report to this General Assembly as soon as practicable, all the facts in relation to such contract, and the administration of said laws; and that said committee sit at their own pleasure, and have full power to send for persons and papers, and to receive written or oral evidence under oath.

APPROVED, December 20th, 1854.

AN ACT *to arrest in part the operations of the present laws upon the subject of the swamp and overflowed lands.*

SECTION
1. Swamp land commissioner's office abolished.
2. Land agents to sell swamp lands for cash or scrip.
3. Time prescribed when scrip must be located, and when certificate for work or services must be presented to the auditor.
4. How contract work is to be measured, received and paid for—compensation of engineer—his oath of office.
5. Governor to appoint selecting agents—their duty and compensation. Governor to forward lands selected to general land office.
6. Salaries and fees of land agents.

SECTION
Tracts in the same township entered by the same person, to be embraced in one certificate.
7. The five existing swamp land offices abolished.
8. Seven land offices established.
9. The five existing land districts abolished, and seven others established.
10. Duty of land agents in office at the passage of this act. Duty of the auditor.
11. Land agents to be elected by the General Assembly.
12. Governor to fill vacancies.
13. Conflicting laws repealed.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the office of swamp land commissioner, and all other offices specially or incidentally created for carrying into effect the present laws, in relation to the swamp and overflowed lands in this State, except that of "land agent," be and the same are hereby abolished.

SEC. 2. That the several land agents, respectively, shall continue to have and exercise the power, as under existing laws, to sell such lands as have been or shall hereafter be confirmed to the State, as swamp and overflowed lands, either for money or for scrip, heretofore issued and still unredeemed, or for scrip which may be hereafter issued in payment for services or on contracts now existing.

SEC. 3. That all scrip issued prior to the first day of January, A. D. 1857, shall be located and canceled within twelve months thereafter; that is to say, by the 1st day of January, A. D. 1858, and all scrip issued after the 1st day of January, A. D. 1857, shall be located and canceled within twelve months from and after the date of such scrip; and all scrip which shall not be lo-

cated and canceled as required by this section, is hereby declared to be void, and the holder forever barred from locating the same; *Provided*, That all certificates for work or services heretofore performed shall be presented to the auditor within three months after the passage of this act, and all certificates to be issued hereafter on account of contracts now existing, shall be presented to the auditor within three months after the expiration of such contract; otherwise such accounts or certificates shall be void, and barred as provided in this section.

SEC. 4. *Be it further enacted*, That for all work now contracted for, and in course of construction, whether levee work, ditching or draining, upon the application and representation of the contractor to the Governor, that the same is completed in accordance with the written contract heretofore entered into with the commissioner of swamp and overflowed lands—the Governor shall appoint a competent engineer to examine and measure such levee, ditch, or drain, and to report all the facts touching the work, whether the same has been executed in accordance with the contract, and the number of cubic yards in said levee, ditch, or drain; and if the Governor shall be satisfied that said contractor has fully complied with all the stipulations of his contract, he shall certify the same to the auditor, and the auditor shall draw his warrant for the amount due, upon the treasurer, for such amount in swamp land scrip. Said engineer shall receive, as a compensation for every day that he may be engaged in making the necessary examination and measurements, the sum of four dollars, in swamp land scrip, and shall, before entering upon the discharge of his duties, as such engineer, take an oath as is now prescribed by law.

SEC. 5. There shall be appointed by the Governor one selecting agent in each county in this State, where there may be any unselected swamp and overflowed lands, whose duty it shall be to select all the unreported lands lying within his county and falling within the terms of the act of Congress conveying the swamp and overflowed lands to this State, and to report to the Governor a complete and perfect list of such selected lands, verified by affidavit, and the Governor shall cause to be forwarded to the proper department at Washington city, a list of all such lands so reported for confirmation, and after such reported list shall have been acted upon, the said selecting agent shall be entitled to demand and receive, upon the certificate of the Governor, the sum of 75 cents for each tract of forty acres, which shall have been confirmed to the State, of the lands so selected by him.

SEC. 6. That so much of existing laws as fixes the salaries of land agents at $800 per annum, be so amended that the several land agents to be elected under the provisions of this act shall each receive, as a compensation in full for their services, the sum of $400 per annum, and a fee of one dollar for each certificate

of purchase which he may issue, and which fee shall be paid by the purchaser; *Provided*, That the said salaries shall be paid in just propotions out of the swamp lands, internal improvement lands, saline lands and seminary fund; *And provided further*, That all tracts of swamp lands which may be in the same township, and may be entered by the same person at one time, shall be embraced in one certificate.

SEC. 7. That so much of the law as establishes the five existing swamp land offices in this State, be and the same is hereby repealed.

SEC. 8. That there shall be established for the sale and entry of the lands of this State, seven land offices, to-wit: one at Fayetteville, in the county of Washington; one at Batesville, in the county of Independence; one at Clarksville, in the county of Johnson; one at Little Rock, in the county of Pulaski; one at Helena, in the county of Phillips; one at Champagnolle, in the county of Union; and one at Washington, in the county of Hempstead.

SEC. 9. That the five land districts established in this State under existing laws, be and the same are hereby abolished, and that seven State land districts be and the same are hereby created and established to embrace the land offices created by section 8, which districts shall contain the same territory each as is now contained in the seven United States land districts in this State respectively.

SEC. 10. It is hereby made the duty of the land agents now in office, to return to the office of the State Auditor, on or before the 1st day of April, A. D. 1857, all the *books*, *plats*, *documents*, and *papers* belonging to their respective offices, and to make a final settlement of their accounts, and the auditor shall cause such *books*, *plats*, *documents and papers* to be distributed to such of the offices created and established by the eighth section of this act, as they shall appropriately and respectively belong, and the expenses of such return, settlement and distribution shall be paid out of the swamp land fund or in scrip; *Provided*, That the land agents now encumbents of the offices at Helena and at Washington, Hempstead county, shall only return to the auditor such *books*, *plats*, *documents* and *papers* as do not appropriately pertain to the said Helena and Washington districts, respectively, accordingly to the provisions of this act, and they shall turn over to their successors in office all others as provided for under existing laws.

SEC. 11. The General Assembly shall, during the present session, and every two years thereafter, elect one land agent for each of the districts created and established by the 8th section of this act, who shall hold their offices respectively for two years, and until their successors are elected and qualified, and said land agents shall take the oath and enter into bond as now required by law.

SEC. 12. All laws and parts of laws relating to the sale or entry of the public lands of this State, and to the duties of land agents, not in conflict with the provisions of this act, are hereby declared to remain in full force and effect.

SEC. 13. If any vacancy occur in the office of land agent or selecting agent by refusal to accept, death, resignation or otherwise, the Governor shall have the power to fill such vacancy by appointment, and such appointee shall be governed by the laws heretofore provided for the government of such officers.

SEC. 14. All laws or parts of laws conflicting with the provisions of this act, be and the same are hereby repealed.

APPROVED, 30th December, 1856.

AN ACT *for the relief of persons who have lost or mislaid their original certificates of entry, under the different swamp land acts of this State.*

SECTION
1. Mode of obtaining a duplicate certificate—duty of the Auditor.
2. Auditor to require the filing of an affidavit of the facts attending the loss of the original certificate.

SECTION
3. Governor authorized to issue a patent certificate, or patent, on the duplicate certificate.
4. Act put in force.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That it shall be lawful for, and it is hereby made the duty of the auditor of this State, on being furnished with proof, deemed sufficient by him, to issue duplicate certificates of entries made by persons under any of the acts heretofore passed for the entry and sale of the swamp and overflowed lands of this State; and, in such cases, the auditor shall recite when such entry was made, by whom made, and the fact that such certificate was given by him in lieu of one averred and proved to be lost by such person, so applying for such duplicate; and in all such cases, the duplicate shall be deemed, taken and considered, for all and every purpose whatever, as in lieu and cancelation of said original certificate; *Provided*, That no such duplicate certificate of entry shall issue, unless it shall appear, by the public records in the auditor's office, or from the public records in the office of the land agent, where the entry shall be alleged to have been made, that such entry in fact existed.

SEC. 2. *Be it further enacted*, That before any such duplicate shall be given or delivered by the auditor, under the first section of this act, he shall require the person, so applying for the said duplicate, to make and file written recital and affidavit of the facts attending said loss, and such other evidence of the loss of such original as he can command, in the discretion of the auditor.

SEC. 3. *Be it further enacted*, That the Governor of this State

shall be authorized to issue, upon the duplicate hereby authorized to be issued, a patent certificate, or patent to the same and like effect as if said original had not been lost or mislaid, under existing laws, for that number.

SEC. 4. *Be it further enacted*, That this act be in force and take effect from and after its passage.

APPROVED, 7th January, 1857.

AN ACT *supplementary to an act passed at the present session of the General Assembly, entitled "An act to arrest in part the operations of the present laws upon the subject of the swamp and overflowed lands."*

SECTION

1. Mode of closing up gaps in the levees on the Mississippi and Arkansas rivers. How and when to be paid for. What scrip not barred.
2. Mode of settling with contractors under this act. State not to be liable for payment of any work beyond the proceeds arising from sale of swamp lands.
3. Auditor's fees for certificates granted to contractors.
4. Swamp land secretary—his term of office—to give bond—to take oath of office.
5. Duties of secretary—to keep swamp land records—to receive reports of locating agents, etc.
6. Mode of paying accounts against the swamp land fund.
7. Compensation of swamp land secretary; his duties.
8. Locating agents to be paid out of the swamp land fund.
9. Land agents to make settlement with the auditor, and pay over all moneys in their hands quarterly.
10. When there are $5,000 in the treasury, arising from sale of swamp lands in any district, work to be commenced in that district.
11. Existing offices of land agent to be abolished at the expiration of the term of office of the land agents; agents to make settlement at the expiration of their term.
12. Mode of selling swamp lands—pre-emptors.
13. Duty of land agent—penalty for failure or violation, etc.
14. Rights of pre-emptors—mode of reclaiming their land.
15. Locating agents appointed by the commissioners, to forward to swamp land secretary their lists of land—their compensation—compensation of engineers, etc.
16. Swamp land commissioners to turn over all records, etc., of their office to the swamp land secretary appointed by the governor.
17. Persons convicted of felony under this act to be imprisoned in the penitentiary.
18. The breaking, cutting or injuring any State levee declared a felony.
19. Governor to have authority to cause all contingent expenses to be paid out of swamp land fund.
20. Compensation of engineers appointed by the governor.
21. Land agents to take oath not to speculate in swamp lands, etc.
22. Conflicting laws repealed.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That in order to close up the gaps in levees on the rivers Mississippi, and so much of the Arkansas as is embraced in the Helena district, as established by the act to which this is supplemental, it shall be lawful for any engineer, under instructions from the governor, to let out contracts for the construction of such levees to close up such gaps; *Provided*, That each contract which shall be made for the performance of any of such work, shall expressly state that the work will only be paid for

in specie, which shall be obtained by the sales of swamp and overflowed lands, situated within the limits of the district in which such work is required, and the district shall be designated in such contract, as the same is established by the act to which this is a supplement, and said contract shall also provide that the swamp and overflowed lands outside of such district shall not in any manner whatever be rendered liable for any work that may or shall be done in such district, and that the State of Arkansas shall not be liable to pay for such work until there shall be in the State treasury a sufficient sum of specie, which shall have been obtained by the sales of swamp and overflowed lands, situated in the said district, to meet and discharge the contract price for such work, in the order and manner required by this act, and that the contractors shall receive payment only upon a warrant or warrants, which shall be issued by the auditor, and the auditor shall not issue any such warrant until there shall be in the State treasury a sufficient amount of specie obtained by the sales of swamp and overflowed lands, situate in the district in which the work shall have been done, to pay such warrant, when issued in the order required by this act, but it shall be the duty of the auditor whenever any certificate in favor of any such contractor shall be presented to him, to receive and number in its order such certificate, and file it in his office, and to open an account in favor of such contractor or contractors, against the swamp land fund of the district in which the work shall have been done, and shall state on said account that the State of Arkansas will not in any manner be liable to pay any part of such account, except when there shall be in the State treasury specie for that purpose, obtained by the sale of swamp and overflowed lands, situate in the district in which the work may have been done, naming such district established by the act to which this is a supplement, and that no part of such account shall ever be paid in any other way, or out of any other fund than that which shall be obtained in the manner aforesaid, and that should all the work performed in such district cost more than the amount of specie which shall be received into the State treasury from the sales of said lands, within said district, no payment shall be made in any manner for the excess of the cost of such work over and above the specie which shall be paid into the State treasury from the sale of swamp and overflowed lands within such district; and it is hereby expressly provided that this act shall not be so construed as to require the sales of such lands to be made exclusively for specie, whilst there shall be swamp land scrip legally receivable in payment for such lands outstanding and not barred by the act to which this is a supplement; *Provided*, That the act to which this is a supplement shall not be so construed as to bar scrip to which persons may be entitled by means of having paid into the different land offices of this State, or any of them,

through mistake or otherwise, which scrip is now withheld from them by the officers who should issue the same, awaiting an adjustment of the same, but shall be so construed as to allow all such scrip to be located upon any of the swamp or overflowed lands upon which it may now be located by existing laws, at any time within the next twelve months after the same shall have been issued, and that the limitations to the act to which this is a supplement shall not commence to run until such time as said scrip shall be issued.

SEC. 2. That when any contractor or contractors under this act, shall file with the auditor the certificate, showing the amount to which he or they may have performed work, under the conditions and restrictions provided in this act, the auditor shall number such certificate and all other such certificates when so received by him in the order in which received and also number the accounts hereinbefore required to be kept, to correspond with the numbers of such certificates, and shall grant in favor of the contractor or contractors a certificate or receipt under his official seal, stating therein the amount to which such contractor or contractors will be entitled in specie without interest thereon, whenever there shall be in the State treasury a sufficient amount of specie which shall have been obtained by the sales of swamp and overflowed lands, situate in the district in which the work shall have been performed, to pay the same in the order of its number, and that the State of Arkansas shall not be liable in any manner whatever, for the payment of such certificate or receipt, or any part thereof, except that the fund in specie, which shall be obtained and paid into the treasury, from the sale of swamp and overflowed lands, situate in the district in which the work shall have been performed, shall be sufficient to pay such certificate or receipt in the order of its number, and such certificates or receipts may be so paid out of such fund, upon a warrant or warrants of the auditor, whenever the fund designated will justify the same, but no warrant shall be drawn by the auditor in payment of any part of any such certificate or receipt until a sufficient sum of such fund shall have been reserved to pay off all such certificates or receipts that may be of lower numbers.

SEC. 3. That the auditor shall be entitled to receive a fee of fifty cents for each certificate or receipt granted by him in such case, to be paid by the person or persons obtaining such certificate or receipt,

SEC. 4. That the Governor be and he is hereby authorized to appoint, from time to time, a swamp land secretary, who shall hold his office during the pleasure of the Governor, not to exceed a term of two years, or until his successor shall be qualified, and the said swamp land secretary shall give bond to the State of Arkansas, in the sum of ten thousand dollars, for the faithful performance of his duties, and when commissioned shall take

an official oath in accordance with the constitution and laws of this State.

SEC. 5. That said secretary shall have charge of all the books, maps, records, papers, contracts and all the furniture and property, of every description or nature which appertains to the office of the former swamp land commissioners, or to the office of the secretary of such commissioners, as well as other papers which may be filed with him, which may relate to the swamp lands or contracts for work under the swamp land laws, and shall be responsible for the preservation of the same in his office, and shall investigate, and ascertain, and report to the Governor whether any of the work which shall be reported for payment by any engineer, has already been in part or wholly paid for or not, so that the same work may not be twice paid for; and said secretary shall receive from the locating agents who may select swamp and overflowed lands, their reports, and if not properly authenticated or made in accordance with the instructions and requirements of the authorities of the United States and of this State, shall return any and all such defective and informal reports to the agents who may have made them, and give them the necessary instructions how to perfect them; and said secretary shall make out and preserve in his office an accurate transcript of the numbers of the swamp and overflowed lands selected by each locating agent, showing the name of the agent who selected the same, in each case; *Provided*, That should such secretary discover that any land designated in any such list, had been previously selected and properly reported by any other locating agent, said secretary shall not include the land so twice selected, in the transcript of the list of lands selected by the agent who may have made such mistake.

SEC. 6. That said swamp land secretary shall perform all such duties connected with the swamp lands and settlement of accounts of contractors for work; and with individuals who may be entitled to compensation for services rendered, or for stationery or other articles purchased for the use of the office of the swamp land commissioners, or the office of the secretary of such commissioners, and for stationery and other contingent expenses of his office, in all cases in which there shall be anything properly due on any such account, and shall certify to the governor the amouns due therefor, and state on what account, and all such amounts which the governor shall be satisfied are due, shall be paid upon warrants of the auditor, out of the swamp land fund, or swamp land scrip, except in cases of new contracts for leveeing and ditching, etc., which shall only be paid in the manner, and upon the terms and conditions elsewhere in this act prescribed, and in paying any such accounts, the auditor shall issue his warrants by the order of the governor, but not otherwise.

SEC. 7. That said swamp land secretary shall be removable

by the governor, and shall receive for his salary, during his continuance in office, twelve hundred dollars per annum, payable quarterly out of the swamp land fund, or in swamp land scrip, upon warrants of the auditor, which shall be issued upon orders of the governor; and said secretary shall perform all such additional duties as shall, from time to time, be required by the governor, in connection with the swamp lands, and accounts against the swamp land fund, whether such accounts have heretofore accrued or may hereafter fall due.

SEC. 8. That the locating or selecting agents, provided for in the act to which this is a supplement, shall only be paid out of the swamp land fund, or in swamp land scrip, after the land shall have been confirmed to the State, and shall not in any case be paid out of the ordinary revenue of the State derived from taxation.

SEC. 9. That to prevent the accumulation of a large amount of specie in the hands of the land agents, provided for in the act to which this is a supplement, each of such agents shall make full settlement with the auditor at the end of each quarter of each fiscal year, whilst such land agent remains in office, and shall, upon making such settlement, pay over to the state treasurer all the scrip and money for which he shall be liable, and should any such agent neglect or fail to make such settlement at the end of each quarter of the fiscal year, which may occur whilst he remains in office, the auditor shall notify the governor of the failure of such land agent, and the governor may, in his discretion, remove the delinquent land agent from office, and appoint another in his place; and should any land agent fail to pay over the swamp land scrip and the money for which he may be liable, at the expiration of each quarter, as hereinbefore required, he shall be deemed guilty of a felony, and if indicted before making such payment shall, upon conviction, be punished accordingly.

SEC. 10. That in order to prevent a useless accumulation of specie in the state treasury from the sales of swamp and overflowed lands, whenever there shall be in the state treasury as much as five thousand dollars in specie, obtained from the sales of such lands, situated in any district as established by the act to which this is a supplement, it shall be lawful for any engineer, under directions of the governor, to let out contracts for making levees, ditching, draining and reclaiming swamp and overflowed lands situated in the district, by the sales of lands in which district the specie in the state treasury shall have been obtained; and in every such case the contracts shall be made for work to be done in each district of the State where required, upon like terms, conditions and restrictions, relative to such district, and the work to be done therein, and the specie to be paid therefor, as those hereinbefore prescribed for work to be contracted for on the rivers Mississippi and Arkansas, so that no part of

the specie which may be obtained by the sales of swamp and overflowed lands situated in one district shall be applied to pay contracts for work in any other district.

SEC. 11. That instead of at the time designated by the act to which this is a supplement, the several State land agents now in office, shall each, on or before the expiration of his term of office, as the same was established and fixed by the law under which he was elected or appointed, comply with the duties enjoined upon him by section ten of the said act to which this is a supplement; and that nothing contained in the act to which this is a supplement shall be so construed or operate as to abolish any of the offices established by law, as heretofore existing, and held by the five land agents, except at the expiration of the term for which each land agent was elected or appointed, and when the said term expires for which the land agent at any of the said offices, where it is proposed or provided by the act to which this is a supplement, there shall, under said act, be no office of land agent; the said office located at that place shall then be abolished, and not before, and all sales of land made, or which shall be made, and all official acts performed or which shall be peformed by any of the said five land agents, in conformity with the laws in force before the passage of the act to which this is a supplement, if made by any one of such land agents before the expiration of the term as established by the law under which he was elected or appointed, shall be legal and valid, and each of said land agents shall be responsible for, and is hereby required to pay over to the state treasurer all scrip and money which he may have received, or be liable for, on or before the expiration of the term for which he was elected or appointed, as said term was fixed by the laws in force, at the time of his election or appointment; *Provided*, That the term for which each of said land agents was elected shall expire within two years from the date of his commission.

SEC. 12. That when any land agent under existing laws is required to give notice in the manner required by the act approved 27th November, 1854, of the additional confirmation of swamp and overflowed lands, he shall also state in such notice that all of said lands so confirmed to the State, which shall not be purchased with money or located with swamp land scrip by pre-emption, within sixty days from the date of said notice, will be sold or offered by him at public sale to the highest bidder at his office, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, of the first Monday after the expiration of the sixty days allowed pre-emptors within which to establish their pre-emptions and pay for their lands, and said notice shall state the day of the month and the year, when the sale will take place, and that lands within six miles of any navigable stream will not be sold at public or private sale for less than seventy-five cents an acre, lands more than six miles from any navigable stream

will not be sold for less than fifty cents an acre, payable in specie or in swamp land scrip, receivable by law for lands in his district; and at the time fixed in said notice for such public sale, the said land agent shall, at the front door of his office, proclaim aloud the commencement of the sale, and shall designate distinctly the lands by the proper numbers as he offers them at public sale, and shall offer the lands, if not fractional, in half quarter sections, or quarter quarter sections, to suit purchasers and enhance the value, but fractional quarter sections shall be offered without being divided, and the highest bidder for any land which shall be so offered, upon complying with his bid, by paying for the land at said sale, shall be the purchaser, and the land agent shall grant to him a certificate of purchase therefor; *Provided*, That no such land shall be sold at less than the minimum prices established by law, and such sale shall continue from day to day, until all of such lands shall have been sold or offered at public sale, by such land agent.

SEC. 13. That if any land agent shall fail to distinctly and publicly offer at such public sale to the highest bidder, any tract or quantity of the lands designated in the list or lists of such additional lands confirmed to the State as swamp and overflowed lands, and not purchased or located by pre-emption right, such land agent shall, if he privately sell such tract or quantity of land, be deemed guilty of a felony, and upon indictment and conviction thereof, shall be punished accordingly, and no land agent shall receive any application for any swamp and overflowed land which may hereafter be confirmed to the State, except from a pre-emptor, until after such land shall have been duly offered at public sale; and should he sell any such lands privately, without first offering them at public sale, or should he sell any land not confirmed to the State, and not designated in lists or plats, or otherwise in official information furnished him by the auditor, indicating that said land has been confirmed to the State, or should said land agent mark any plat or plats belonging to his office, so as to falsely indicate that any tract or tracts had been sold, or so as to withold from sale to the first applicant any tract which the said land agent might legally and ought to sell to the first applicant therefor, such land agent, for so doing himself, or suffering any one else so to do in his office, shall for any of such offences or malfeasances, be deemed guilty of felony, and upon indictment and conviction thereof, shall be punished accordingly.

SEC. 14. That any person who resides on, or who may hereafter reside on, reclaim or cultivate any of the swamp or overflowed lands which may be confirmed to the State, shall have a pre-emption right to one hundred and sixty acres, to be proved up according to existing laws, and it shall be lawful for such person to make such levees, drains, or ditches as are, or may be necessary to thoroughly reclaim such land, and render it fit for cultivation; and on presenting the certificate of the county surveyor of

his county, supported by the affidavit of two disinterested citizens of such county, that said land is actually and permanently reclaimed by such levees, drains or ditches, together with the actual value thereof, to the auditor, he shall give such person a certificate of the value of such reclamation, which shall be received by the land agent of the proper district in payment of such land; *Provided*, The cost of such reclamation does not exceed the price of such land at the price per acre now established by law; *And provided further*, That such certificate shall not be assignable.

SEC. 15. That all locating agents heretofore appointed and retained in service by the swamp land commissioners or by any one of said commissioners, shall immediately after notified of the passage of this act, properly authenticate, as heretofore required, any and all lists of swamp and overflowed lands which may have beed selected by them, respectively, before the passage of this act, and which lands so selected, may not heretofore have been duly reported to any one of such swamp land commissioners, or to the secretary of such commissioners, and after such locating agents, respectively, shall have so authenticated their respective lists of such lands, each of said agents shall immediately forward his said list or lists of such lands to the swamp land secretary at Little Rock, and the said secretary shall receive and examine and properly attend to all such lists, and shall certify to the governor the amount due to the agent or agents for selecting said lands, according to the terms fixed by the swamp land commissioners for such work, and the same shall be paid for by order of the governor, upon a warrant of the auditor, out of the swamp land fund, or in swamp land scrip; and all amounts which still remain due and unpaid, if not already audited by the swamp land commissioners, in favor of any such agents, or in favor of the engineers, or any one of them, shall be adjusted and paid out of said swamp land fund, or in swamp land scrip, in the same manner as last aforesaid.

SEC. 16. That all the books, records, maps, papers, reports of locating agents, reports of engineers, contracts, furniture and property of every nature and kind which belongs to the office of swamp land commissioners, or to the office of their secretary, or which relate to the business of the swamp and overflowed lands of this State, or any work done or proposed to be done towards reclaiming any of such lands, shall as early as possible, after the passage of this act, be delivered by said swamp land commissioners and their secretary to the swamp land secretary, who shall be appointed by the governor as hereinbefore provided—it being the object of the act to which this is a supplement to abolish the office of swamp land commissioners and cause all their official powers and compensation, as such commissioners, to cease at the date of the approval of said act, and the said act shall be construed and so operate as to accomplish the said objects.

SEC. 17. That whenever any person shall be convicted of a felony in any case which shall occur or arise under any provision of this act, he shall be punished by imprisonment at hard labor in the jail and penitentiary of this State, for a period of not less than one year nor more than five years.

SEC. 18. That should any person or persons cut, break, or in any wise injure any levee or levees constructed, or which shall hereafter be constructed by authority of this State or paid for, or which shall be paid for out of the swamp land fund of this State, in whole or in part, or should any person or persons procure or cause the same to be done by slaves, he, she, or they so offending shall be deemed guilty of a felony, and when indicted and convicted shall be punished accordingly.

SEC. 19. That for any and all contingent expenses which shall be necessary to enable the governor to have the objects of this act accomplished and complied with, under the restrictions and limitations named in this act, and for all other expenses which the governor shall deem it proper to incur, to promote the interests of the State, by having the selected swamp and overflowed lands not yet confirmed or patented, so confirmed and patented to the State of Arkansas as early as practicable, he shall have authority to cause the same to be paid for upon warrants of the auditor out of the swamp land fund or in swamp land scrip.

SEC. 20. That any engineer who shall be appointed by the governor to let out any contract or contracts, or to make surveys and determine the locality for any levee or other work, necessary in the reclamation of swamp and overflowed lands, shall be entitled to the same per diem compensation fixed by the act to which this is a supplement, for services in examining and reporting upon work already finished, and such compensation shall be paid as required by the act to which this is a supplement, out of the swamp land fund or in swamp land scrip.

SEC. 21. That the land agents provided for in the act to which this is a supplement, before entering upon the duties of their respective offices, shall, severally, take and subscribe an oath or affirmation, that he will not directly or indirectly engage in any speculation in swamp and overflowed lands, nor give information to any agent, friend, or secret or other partner, so as to secure the advantages of such information to himself or any person, association or company, to the prejudice or exclusion of other persons.

SEC. 22. That all laws and parts of laws contrary to this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

APPROVED, 13th January, 1857.

AN ACT *to authorize the Governor to make patents to assignees of certificates of purchase of Swamp Lands.*

SECTION
1. Assignments of certificates of purchase of swamp lands authorized—form of assignment—assignment to be witnessed and acknowledged or proven.
SECTION
2. Governor to make patents to the assignees.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That from and after the passage of this act, it shall be lawful for any person to assign and transfer certificates of purchase of swamp or overflowed lands, which assignment and transfer shall be in substance as follows:

For value received, I ——— ———————, do assign and transfer to ——— ——————— and to his heirs and assigns, all my right, title, interest and claim, to the within described land.

Given under my hand and seal, this ——— day of ————————, A. D. 18—; witness ———— ———————— [SEAL.]

Which shall be witnessed by two respectable subscribing witnesses and acknowledged or proven in the manner authorized by law for deed of conveyance.

SEC. 2. *And be it further enacted*, That it shall be competent for the Governor, on the presentation of any certificate hereafter to be assigned and transferred, or heretofore assigned and transferred in the manner aforesaid, to make patent to the assignee, the same as patent might be made to the original purchaser under the existing law.

APPROVED, 15th January, 1857.

AN ACT *for the relief of persons purchasing Swamp and Overflowed Lands before the time that they were subject to entry under existing laws.*

SECTION
1. Right of pre-emption granted to persons who purchased swamp lands before their confirmation.
SECTION
2. When pre-emption right may expire.
3. When pre-emptors to be entitled to a certificate of entry.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That all persons who have heretofore entered any of the swamp and overflowed lands of this State at any of the United States land offices, before their confirmation as such, shall, upon filing sufficient proof with the land agent of the district in which such land may be situate, that they or their heirs or assigns, have relinquished to the United States all right, title or claim, which they may have had to said lands, shall have a pre-emption for the space of six months, to enter at such office said lands.

SEC. 2. *Be it further enacted*, That the pre-emption mentioned in the preceding section, shall not expire after the confimation of such lands; but if the proof herein required to be made is not filed within the time specified, then and in that event, such lands may be offered and sold as now provided by existing laws regulating the swamp land interest of this State.

SEC. 3. *Be it further enacted*, That upon the filing of the proof herein specified, such persons who have entered as therein set forth, shall upon paying to the State land agent of the proper district for such lands, the minimum price now established by law, be entitled to a certificate of entry.

SEC. 4. *Be it further enacted*, That this act take effect from and after its passage.

APPROVED, 15th January, 1857.

AN ACT *amendatory of exising laws in relation to the entry heretofore, of unreclaimed swamp and overflowed lands of this State.*

SECTION
1. Certain entries of unconfirmed swamp lands confirmed; preference right to re-enter after confirmation given to citizen holders of certificates of purchase of unconfirmed swamp lands.
2. Conflicting laws repealed; act put in force.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the entry of swamp and overflowed lands, made in accordance with the fifth section of "an act to provide for the reclaiming of the swamp and overflowed lands, donated to this State by the United States," approved 6th January, 1851, be and the same are hereby approved and confirmed, and in all cases where such lands were entered before the old board of swamp land commissioners, under said section, and are still unconfirmed to this State, the person or persons so entering, or holding the certificate by assignment or transfer, shall have a preference right, provided the holder be a citizen of the State, to re-enter the said lands, as soon as the same shall be confirmed to this State, for the space of sixty days from and after public notice is duly given of said confirmation by the proper land agent for the district in which such lands may be situate, and not thereafter.

SEC. 2. *Be it further enacted*, That all laws and parts of laws conflicting with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect and be in force from and after its passage.

APPROVED, 15th January, 1857.

AN ACT *to extend the provisions of section two, chapter sixty, of the Digest of the State of Arkansas, title ejectment.*

SECTION		SECTION	
1.	When action of ejectment may be maintained for the possession of		swamp lands before a patent is issued.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the action of ejectment may be maintained in all cases when the plaintiff claims the possession of the premises under or by virtue of an entry made with the proper swamp land agent, or land agent of the proper land office of the State of Arkansas, and the patent certificates granted by any of the aforenamed officers, shall be evidence of title in the party to whom it is granted.

APPROVED, 15th January, 1857.

ORDINANCES

OF A GENERAL NATURE ADOPTED BY THE BOARD OF SWAMP LAND COMMISSIONERS, FROM MARCH 6, 1851, TO JULY 25, 1855.

No. 1.

Be it ordained by the Board of Swamp Land Commissioners, That all levees made or received by the swamp land commissioners, shall be of the following dimensions, viz:

For every foot in height, one foot wide on top, and, in addition, seven feet base. All levees to be made at least thirty inches above overflow.

Adopted, March 6, 1851.

No. 2.

Be it ordained by the Board of Swamp Land Commissioners, That each of the commissioners be, and are hereby, authorized, within their respective divisions, with the aid of such local agents as they may call to their assistance, to locate the necessary levees, and at such times and places, in said division, as they severally shall think proper, to let and contract for building said levees, to the lowest bidder, not to exceed fifteen cents for cleared land, and twenty cents for wood land, per cubic yard, giving at least twenty days' notice of said letting, by publication in some newspaper of general circulation, and that said commissioners shall be severally authorized to supervise

and pass upon the work of the contractors within their said respective districts.

Be it further ordered, That said commissioners have discretionary power in determining where and what particular points shall be leveed, and in the event he cannot let a contract to close a gap between two prominent points, then he shall have the right to reject all contracts that he may have let between specified points.

Be it further ordered, That said commissioners be, and they are hereby authorized, to accept and appropriate any donation, to aid the State in the reclamation of any point, town, plantation, that is or may be desired to be leveed speedily, or otherwise, as the case may be; and in the event that any contractor fails to use the proper industry, and thereby the State may be made to loose by a failure on the part of the contractor, to commence the levee in time to complete the same by the first day of March, 1852, in the opinion of the commissioners, then after the 1st day of January, 1852, he is given the power to annul the contract, and re-let the same to other and responsible persons, that will forthwith commence and prosecute said contract to completion.

Adopted, June 3, 1851.

No. 3.

Be it ordained by the Board of Swamp Land Commissioners, That each commissioner, in his respective district, have discretionary power to determine the base of the levee, particularly where the waves do not affect the same; *Provided*, That no base of levee shall exceed more than seven feet for one foot in height, nor less than five feet for every foot in height; in the leveeing of deep bayous, to have discretionary power to make the base ten feet.

Be it further ordered, That each individual, taking a contract for leveeing, shall remove all rubbish, such as leaves, cane, wood or trash, from the surface of the ground, within the base of the said levee.

Be it further ordered, That John W. Buckner have discretionary power to give contractors in his division, one, two and three years, to complete their contracts, if necessary; *Provided*, Each contractor will, at his own expense, secure against damage.

Adopted, September 1, 1851.

No. 4.

Be it ordained by the Board of Swamp Land Commissioners, That contractors claiming adjacent lands under the law giving them a preference right, shall take them immediately in rear of their work, by right of lines, as near as may be; and when adjacent lands to a contractor's work be owned by others, or will not be taken by such contractors, then his scrip or claim shall be floating, and stand upon the same footing with other claims in general.

Be it further ordained, That no portion of land shall be sold for cash, at the prices fixed by the board, except to contractors, in payment of work necessary to the reclamation of said lands, or to pay expenses necessary to carry on the work contemplated by the act of the Arkansas legislature, of 6th and 15th January, 1851.

Adopted, September 2, 1851.

No. 5.

Be it ordained by the Board of Swamp Land Commissioners, That all that portion of the swamp lands donated to the State of Arkansas, by an act of Congress, approved the 28th day of September, 1850, lying and being within six miles of any navigable stream in this State, shall be, and they are hereby, classed in the *first class*, and the price fixed at *seventy-five* cents per acre.

And be it further ordained, That all swamp land, lying and being over six miles from any navigable stream in this State, and all lands between the rivers and levees, are hereby classed in the *second class*, and the price thereof fixed at *fifty cents* per acre.

And be it further ordained, That the following named streams, running through and bordering upon this State are hereby declared navigable streams, as coming within the purview of this order, viz: Misssissippi, St. Francis, White, Arkansas, Bartholomew, Saline, Ouachita, Little River, Little Missouri, Petit Jean, Cache, Spring, Red and Black rivers.

Adopted, October 14, 1851.

No. 6.

Be it ordained by the Board of Swamp Land Commissioners, That there be established three swamp land offices, for the sale of lands donated to the State of Arkansas, by act of Congress, approved the 28th day of September, A. D. 1850: one of which

shall be located in each of the three divisions of swamp lands, and when so located, shall be severally subject to the supervision of the commissioner assigned to said division.

Be it further ordained, That it shall be the duty of the board of swamp land commissioners, as soon as the interest of the State will require, after the passage of this ordinance, to appoint three suitable persons, one of whom shall reside and open an office in each division of this State, for the sale and entry of swamp lands within said division, and to keep an entry of all lands sold for cash, scrip, or taken on account of work done; to receive and receipt for the same, and to file away and safely keep all papers, bonds and redeemed scrip, and fill up certificates for the purchaser, to which certificates the name of each individual commissioner must be affixed, in his own proper hand-writing, and the same shall be counter-signed by said sub-commissioner; and said certificate, when so signed and countersigned, shall entitle the purchaser to the land so bought and sold.

Be it further ordained, That each sub-commissioner, before he enters upon the duties of his office, shall enter into bond to the commissioner having charge of said division, in any sum not exceeding fifty thousand dollars, conditioned that he will faithfully perform the duties of a register and receiver of moneys for the division of swamp lands for which he was appointed, and render accounts, from time to time, to the commissioner having charge, and keep his books subject to his inspection, at all times, and will make monthly reports of his proceedings to the office of the board.

And be it further ordained, That said sub-commissioner (or register and receiver) shall, severally, receive for their services, two dollars per day, being the pay allowed to such by act of the legislature, approved 6th January, 1851.

And be it further ordained, That all the acts of the said sub-commissioners (registers and receivers) shall be subject to the confirmation of the board of swamp land commissioners, at the next regular meeting of the board, after the reception of the reports of said sub-commissioners.

Adopted, October 14, 1851.

No. 7.

Be it ordained by the Board of Swamp Land Commissioners, That, hereafter, contractors may receive pay whenever they have completed 5,000 cubic yards of levee, according to the requisition of their contracts, or as soon thereafter as the same can be measured, received and approved of; *Provided, always*, That said 5,000 yards shall be fully secured according to the

requisitions of orders heretofore passed, and shall be approved of by the commissioner having charge of the division in which said levee is constructed.

Adopted, January 8, 1852.

No. 8.

Be it ordained by the Board of Swamp Land Commissioners, That the scrip of this office shall be located on contiguous eighties, forties and lesser fractions, in a body, as near as may be, except in residuary and scattering fractions, which may be taken in any part of the State, and the excess paid for in cash; *Provided*, The excess does not exceed eighty acres.

Adopted, January 9, 1852.

No. 9.

Be it ordained by the Board of Swamp Land Commissioners, That the secretary of the board, or the commissioner in charge of any division, shall issue certificates to all persons who may apply for lands at their office, where the scrip, or a duly authenticated account for work done, is filed with the same, describing accurately the amount of scrip, or amount of the authenticated account filed with said application. But in no case shall two certificates be issued for the same tract or tracts of land; and in all cases the first applicant, if the application is accompanied with the scrip or an authenticated account for levee work done, shall be entitled to the certificate, upon the presentation of which to the board of swamp land commissioners, when the lands therein described are confirmed to the State, if said certificate is found correct, the holder thereof, being the original applicant, shall receive a full certificate of purchase for the lands described in said certificate; and that all ordinances, in conflict with this ordinance, are hereby repealed.

Adopted, January 9, 1852.

No. 10.

Be it ordained by the Board of Swamp Land Commissioners, That section 13 of the act of the legislature of Arkansas, approved the 6th of January, A. D. 1851, referring to pre-emptions, is construed as follows, to wit:

1st. That all persons entitled to pre-emptions under the law of the United States, have the same right under the law of the

State, as have been given to them by any act of Congress, passed previous to the 28th of September, 1850.

2d. The residence mentioned in said 13th section, as well as the improvement therein named, is, in the opinion of the said commissioners, intended to refer to the date of said act of the legislature, January 6th, 1851.

3d. That the proof of residence or improvements mentioned in the preceding section, shall be by two disinterested and credible witnesses, supported by the affidavit of the claimant, if he claims in his own right, or by the oath of the assignor, if he claims as assignee, that the residence existed on the 6th day of January, 1851, or that the improvement existed at that date, and was *bona fide*, and that said claimant has not received the benefit of pre-emption under said act of January, 1851, except in case of assignees.

4th. That when the improvement of any claimant lies upon more than one quarter section, such claimant shall elect which quarter section he will take.

Adopted, *April* 9, 1852.

No. 11.

Be it ordained by the Board of Swamp Land Commissioners, That all the scrip on file in the office of the board of swamp land commissioners, at this time, shall have the name of the person filing the same written upon its face, in red ink; and all that may hereafter be filed, shall, at the time of filing, have the name of the applicant written on its face.

Be it further ordained, That, in the event that any person filing scrip in this office may wish to change his location, or withdraw his scrip, and put it upon the market, his scrip thus filed, will and shall be sufficient evidence for a new issue.

Adopted, *April* 9, 1852.

No. 12.

Be it ordained by the Board of Swamp Land Commissioners, That the price for making drains or ditches shall not exceed fifteen cents per cubic yard, and the ditches to be put in as wide as the commissioners may direct, to be let out to the lowest bidder; and when it is necessary to clear off a piece of land, for the purpose of making a cut-off, or other purpose, more than ten dollars per acre shall not be allowed for cutting down and cutting up all timber, and taking off the wood.

Adopted, *April* 12, 1852.

No. 13.

Be it ordained by the Board of Swamp Land Commissioners, That the order passed on the 9th day of January last, making it the duty of the secretary of the board of commissioners, or the commissioner having charge of any division, to receive applications, shall be construed so as to mean, that each one of the commissioners have charge of a separate division, and that the secretary of the board shall act for the whole whilst in session, and may exercise the right to receive applications for land in any division, at the request of the commissioner having charge, but not otherwise.

Adopted, April 14, 1852.

No. 14.

Be it ordained by the Board of Swamp Land Commissioners, That the *maximum* price for excavation, ditching and draining, shall be fixed at *twenty cents* per cubic yard, where the same shall be taken through wild or timbered land; and the sum of *fifteen cents* for cleared land.

Adopted, July 6, 1852.

No. 15.

Ordered by the Board of Swamp Land Commissioners, That all pre-emption proofs and papers, pertaining to the rights of parties claiming lands by pre-emption or otherwise, on file in the office of the board of swamp land commissioners, be turned over to the land agent of the district to which they belong, to whom is entrusted the power and duty of receiving applications for swamp lands, and of adjudicating the rights of pre-emption to the same.

Adopted, April 7, 1853.

No. 16.

Ordered by the Board of Swamp Land Commissioners, That all sales of swamp and overflowed lands made subsequent to 9th February, 1853, by agents acting under authority from the former swamp land commissioners, are, in the opinion of this

board, illegal and void; and it is the request of this board, that the land agents in their respective districts, withhold from sale all such lands until such sale may be legally effected.

Adopted, *April* 5, 1853.

No. 17.

Applications being now made to this board by contractors and officers to whom balances are due, under the acts of the legislature, approved January 6th, 1851, entitled "An act for the reclamation of the swamp and overflowed lands donated to the State by the United States," and the act supplementary thereto, approved 15th January, 1851, and by persons holding scrip issued under said laws, to said contractors and officers, to take in payment and purchase parts of said swamp and overflowed lands; and the decision of this board being imperatively required, by private rights and the public interest in regard to the construction of said acts, and of the said legislature, approved January 12th, 1853, entitled "An act amendatory of existing laws regulating the landed interests of this State," and in regard to the powers of this board, and of the land agents of the State, provided for under said last mentioned act; and this board having anxiously and carefully considered said acts, with an earnest desire equally to avoid the exercise of powers not belonging to them, and the omission to exercise those conferred upon them; and having arrived at conclusions which seem to them inevitable as to these questions, which, in the absence of one of the board, they have heretofore declined to decide—

It is therefore by this Board resolved and decided as follows: 1*st*, That this board is the identical board of commissioners established by said act of January 6th, 1851, there having been a change in the members, but none in law, in the board itself.

2*d*. That this board hold such meetings as were provided for by said act of January 6th, 1851, and the duties which they are to discharge, are those "imposed upon them by the act of January 6th, 1851," of which that of January 12th, 1853, is but an amendment.

3*d*. That the object of the last act of the legislature above cited, was to sub-divide the powers and duties conferred and imposed by said original act on this board; and to transfer a certain portion of those powers and duties at a particular time, and on the happening of a particular contingency to the land agents provided for by said last enacted act, and continue the residue in this board, by virtue of said original act.

4*th*. That after the said land agents shall have been furnished by the auditor with the books, maps and plats of the swamp and other lands belonging to said State, and not before, they will have full powers and authority to sell such swamp and overflowed lands, being governed therein by the provisions of said several acts, which powers have vested, or will vest successively in said land agents, as they have been or shall be, respectively, furnished with said books, maps and plats.

5*th*. That nothing in said two acts of January 6th and January 15th, 1851, was, or will be altered or changed, until the auditor made out and furnished, or shall make out and furnish to said respective land agents, the maps and plats required by said act of January 12th, 1853, to be furnished by him.

6*th*. That after receiving said maps and plats, and not before, the respective land agents could or can advertise said swamp lands in their respective districts for sale, "taking the books and maps furnished by the auditor for their guides, with regard to what lands are so owned by the State," such advertisement to be made as provided by said last act; and it will be the duty of each, after such advertisement, to offer said lands for sale at public auction, to the highest bidder, for not less than one dollar and twenty-five cents per acre; after which, and not before, when all such land in a particular district shall have been offered for sale, the land agent for that district will be authorized to allow the private entry and purchase of such lands.

7*th*. That such books, maps and plats having been furnished by the auditor to one only of said land agents, to wit: Jesse A. Jackson, esq., and the publication of his advertisement of sale being commenced only, and not completed, the result is, that the powers of this board, as to the sale of lands, have ceased as to the Helena district, and are transferred to said land agent, Jesse A. Jackson, but remain unaltered and unimpaired as to the residue of the State; and all entries of land, with any of said land agents, and purchasers of land from them, and applications for purchases made to them up to this time, are mere nullities; nor can any one of said land agents sell, or receive pay for any of said lands at private sale, or receive applications therefor, until he shall first have advertised said lands and offered them for sale at public sale; no such land agent having the power or authority to sell a single tract of such land until he shall first have offered the same at public sale.

8*th*. That in the meantime the different contractors, commissioners, engineers, surveyors, and other officers of all kinds, who have rendered services, or done work under said original act, have thereby a vested right, which no legislature can, or could impair, lessen or render ineffectual, to receive their pay for such work or services, either in lands or in scrip, at their option, which scrip, they, or any assignee or holder thereof, has

a like vested right to locate on any of the unlocated portion of the swamp and overflowed lands in said State.

9*th*. That when any such selection or location is made in any land district, and this board is informed thereof, before the said books, maps and plats aforesaid are furnished to the land agent for that district, the numbers of the land so selected must be furnished to this board, who may give the locator a certificate of location and selection, under the 6th section of the said act of January 6th, 1851.

10*th*. That, accordingly, this board will hereafter receive applications to purchase such land and applications of such contractors and officers to be paid in such lands, and will recognize such applications heretofore made to them, as legally made and issue such certificates therefor.

11*th*. And, in order to prevent injustice and save private rights and to secure as far as they may, persons who have heretofore made application to said land agents to purchase such lands, this board will, whenever furnished with competent evidence that any person has purchased any of such lands from any of said land agents and paid then therefor, in scrip or otherwise, (regarding the certificates of said agents or copies of their lists of sales certified by them as sufficient evidence) and whenever the party also produces evidence that the scrip or funds paid by him are in the hands of the auditor or treasurer as paid by him, consider such purchase and payment as an application to purchase the same lands and payment therefor made to them, as of the day when such proof is furnished, reserving all rights vested in or accrued to any other person or persons in the mean time: and will give certificate accordingly: and to that end will receive and consider as applications made to them on the day when received, lists from said land agents of all such lands heretofore, but not hereafter, purchased of them; so that in any event and whatever may be ultimately decided by the courts in regard to the questions involved, the rights of innocent purchasers will be protected and ruinous litigation avoided.

12*th*. That this board considers that scrip issued by the auditor, upon contracts made for leveeing or locating, or for salaries, pay, or compensation for services contracted for a term of service commenced under the said original act stands in all respects upon the same footing as scrip issued by their predecessors and will receive the same in payment for lands on precisely the same terms in all respects, as they will receive such scrip issued by their predecessors in office.

Adopted, *October* 6, 1853.

No. 18.

WHEREAS, during the month of March last, Robert W. Walker, acting under the authority of the board of swamp land commissioners as their agent, in the sale of swamp and overflowed lands at Pine Bluff, received the applications of sundry persons for swamp lands, together with a deposit of scrip or leyee work received by the commissioners, which applications were neglected by the old board to be certified to the auditor and which applications, together with the evidences of payment, have been sent to this office and examined and compared.

It is therefore ordered, That a record be made and placed on the files of this office of said applications with their true date, by whom, description of the land and the scrip or levee work paid in for same, and a copy thereof certified to the auditor by way of special report, in order that the rights of the parties may be protected herein.

Adopted, January 11th, 1854.

No. 19.

WHEREAS, by an ordinance of the board of swamp land commissioners, passed on the 6th day of October, 1853, recognizing or receiving as applications for the entry of swamp lands the list reported, accompanied with the money or scrip in payment therefor by the several State land agents who had previous to receiving the plats, maps, etc., received applications and scrip for a quantity of land in the name of a number of persons as of the date when filed and scrip or money paid in; AND WHEREAS, Garlen Silvey, the land agent for the Jacksonport district, did on the 9th day of February, 1854, file with John H. Crease, as assistant secretary of the board of swamp land commissioners, the list of such lands as had been applied to him for, and also the full amount of scrip in payment therefor; *And whereas*, Also, the said list has not been properly attended to, and adjusted by the old board, and considering that the list and scrip when placed in the hands of the assistant secretary were virtually in the possession of the board of swamp land commissioners and to protect the interest of a number of persons whereby no damage can be done the State—

It is therefore ordered, That said list of lands so applied for by sundry persons to Garlen Silvey, then State land agent of the Jacksonport land district be copied upon the book of entries or sales in the swamp land office, and the secretary furnish the auditor with a certified copy thereof; *Provided*, That nothing contained herein shall be so construed as to affect or interfere

with any entry in said list made to any other person prior to the filing of said list, and that the secretary issue to each person named in said list, a certificate or certificates, for the proper lands as of the date when said list was filed, upon the applicant paying him the usual fee of one dollar for each certificate.

Adopted, July 25th, 1855.

COMMISSIONERS' OATH OF OFFICE.

I, Lambert J. Reardon, do solemnly swear that I will support the Constitution of the United States, and of the State of Arkansas, and that I will well and truly discharge the duties of swamp land commissioner according to law, and that I have not either directly or indirectly, been engaged or in any manner concerned in any duel, or given or been the bearer of any challenge to fight a duel in this State, since the first day of January, one thousand eight hundred and thirty-eight—so help me God.

L. J. REARDON.

Subscribed and sworn to, in the county of Pulaski, in the State of Arkansas, before the undersigned, a judge of a court of record, this 22d day of January, A. D. 1853.

B. F. OWEN, *Judge of the Court of Probate of Pulaski county, in the State of Arkansas.*

I, John McDaniel, do solemnly swear, that I will support the constitution of the United States, and of the State of Arkansas, and that I will well and truly discharge the duties of *swamp land commissioner* according to law, and that I have not either directly or indirectly been engaged, or in any manner concerned in any duel, or given, or been the bearer of any challenge to fight a duel in this State since the first day of January, one thousand eight hundred and thirty-eight—so help me God.

JOHN McDANIEL.

Subscribed and sworn to, in the county of St. Francis, in the State of Arkansas, before the undersigned, a judge of a court of record, this 31st day of January, A. D. 1853.

PHILANDER LITTELL, *Judge of the Court of Probate, and presiding Judge of the County Court, in the State of Arkansas.*

I, Joseph D. Dickson, do solemnly swear that I will support the constitution of the United States, and of the State of Arkansas, and that I will well and truly discharge the duties of *swamp land commissioner* according to law, and that I have not either directly or indirectly been engaged, or in any manner concerned in any duel, or given or been the bearer of any challenge to fight a duel in this State since the first day of January, one thousand eight hundred and thirty eight—so help me God.

JO. D. DICKSON.

Subscribed and sworn to before the undersigned, a judge of a court of record, in the State of Arkansas, this 9th day of February, A. D. 1853.

A. B. GREENWOOD, *Judge*.

EXECUTIVE OFFICE, LITTLE ROCK, ARK.,
3d April, 1857.

I, ELIAS N. CONWAY, Governor of the State of Arknnsas, do hereby certify that Lambert J. Reardon qualified as swamp land commissioner, on the 22d day of January, 1853; that John McDaniel qualified as swamp land commissioner, on the 31st day of January, 1853, and that Joseph D. Dickson qualified as swamp land commissioner on the 9th day of February, 1853, as shown by their authenticated oaths of office on file in the executive office of the State of Arkansas, of which oaths the annexed and foregoing are true copies as well as true copies of the authentications of their respective official oaths aforesaid.

In testimony whereof, I have hereunto signed my [L. S.] name and caused the seal of the State of Arkansas to be affixed to the above written.

ELIAS N. CONWAY.

By the Governor,
D. B. GREER, *Secretary of State*.
By THOS. C. SHEPPERD, *Dep'y Sec'y*.

APPENDIX.

INSTRUCTIONS AND DECISIONS

OF THE

GENERAL LAND OFFICE.

GENERAL LAND OFFICE,
May 27th, 1852.

SIR—With the approbation of the Secretary of the Interior, it has been decided:

1st. That in all cases, where any of the lands granted to the several States, by the act of 28th September, 1850, to "enable the State of Arkansas and other States to reclaim the swamp lands within their limits," have been sold since the passage of that act, such sales will be declared void, and the purchase money refunded to the purchaser, or if the State will convey such lands to the purchasers, and take from them assignment of their rights, the purchase money will be refunded to the States as the assignees of the purchasers.

2d. In like manner, where any lands embraced by the act of 28th September, 1850, have been located by bounty land warrants, since the passage of that act, the locations will be declared void, and the land certified to the State. But, if the State will make a title to the person locating such warrant, and take an assignment of the warrant, the new location of such warrant made by the State, or the assignee of the State, according to law, will be respected and patented.

3d. Where lands embraced by the act of 28th September, 1850, have been located since the passage of that act, under the act of 4th September, 1841, they will be regarded as vested in the State under the act of 1850, and the State can locate the interferences elsewhere, in accordance with the provisions of the act of 1841.

* * * * * * *

It is decided to take this action in view of the decision of the

Secretary of the Interior, of 23d December, 1851, that the grant made by the act of 28th September, 1850, "is regarded as taking effect from the date of the law making it, and as vesting the inchoate title in the States, and that any subsequent sale or location of swamp or overflowed lands, must be held to be illegal and the purchase money refunded, or a change of location ordered. Subsequent entries, however, which have been made by pre-emption in virtue of settlements made prior to the grant, will be valid, because in those cases the right of pre-emption attached from the date of settlement and becomes a vested right, which can be divested only by an abandonment or a failure in the performance of its conditions;" and in view of the fact, that so far as this office is advised, none of the States benefited by the act of 28th September, 1850, have made provision for confirming titles from the United States, for purchases or locations made since the passage of that act of the lands embraced by it. * * * * *

JOHN WILSON,
Acting Commissioner.

GENERAL LAND OFFICE,
March 7th, 1857.

His Excellency ELIAS N. CONWAY,
Governor of Arkansas,
Little Rock, Arkansas:

SIR—By an act passed on the 3d March, 1857, Congress has confirmed the selections of swamp and overflowed lands granted to the several States by the act of Congress, approved September 28th, 1850, "heretofore made and reported" to this office, and, "so far as the same shall remain vacant and unappropriated, and not interferred with by any actual settlement under any existing law of the United States, it is required that the same shall be approved and patented as soon as possible."

The same law continues in force the act of 2d of March, 1855, and extends its provisions to all entries and locations of lands claimed as swamp lands, made since its passage.

By this law all of the contested cases remaining unadjusted are at an end, and we are precluded from entering further objections against the approval of any lands heretofore selected and reported under the law; the States are entitled to all of their selections remaining vacant and unappropriated, and not interfered with by any actual settlement; also the purchase money in case of cash entry made since the passage of the act of 1850, and an equivalent in lands for the tracts located with military bounty land warrants or scrip.

Every effort will be made to promote the speedy adjustment of the swamp grant in conformity with this recent legislation, and the selections in each State will be acted upon in the order

of their receipt at this office. The lists necessary to enable the States to derive the benefits of the acts of 2d March, 1855, and 3d March, 1857, will be prepared and transmitted without delay.

As the act of 1857 continues in force the prior law of 2d March, 1855, the provisions of the latter regarding the issue of patents to the purchasers, etc., will be considered as binding, and the same will be withheld, in case of prior sale by the State, until the execution of the release therein mentioned. It will be necessary, therefore, that we should be advised of all sales of swamp lands made by the State since the passage of said act of 1855, which report should be made within ninety days from the date of the law of 1857, in order that we may be enabled properly to discriminate.

The necessary information relative to the form of the report, etc., will be found in the letter from this office of March 9th, 1855, and it is respectfully suggested that you give the earliest possible attention to the matter.

With great respect,
your obedient servant,
THOMAS A. HENDRICKS,
Commissioner.

OPINION OF THE

SOLICITOR GENERAL OF ARKANSAS.

TREASURER'S OFFICE,
Little Rock, Arkansas,
16th January, 1857.

S. H. HEMPSTEAD, *Solicitor General, and*
THOMAS JOHNSON, *Attorney General of Arkansas:*

GENTLEMEN—As treasurer of the State of Arkansas, I desire your written opinion upon the law and facts as given below:

The auditor of public accounts has issued warrants to refund swamp land scrip to purchasers of portions of this grant for the difference in the price of *first* and *second* class land. This difference is 25 cents per acre. The law under which the auditor issued his warrants you will find in the acts of 1854 and 1855, at pages 202 and 203, and sections 2 and 3 of said act.

You will please state fully and specifically the construction of this act; and whether I am compelled to issue scrip upon such warrants; and if issued by me, before the discovery of the ground upon which the warrant or warrants issued, if I am

bound to deliver the scrip to the person claiming the interest in the warrant.

The lands upon which refunding certificates, issued in the case under consideration by the land agent at Helena, and upon which the auditor's warrants in question have been issued, were entered in the years 1851 and 1852, and perhaps, in some instances since the years last aforesaid.

You will learn from the accompanying ordinances of the board of swamp land commissioners, the first adopted on the 14th October, 1851, and the latter on the 23d September, 1856, and upon the last one of these ordinances, the auditor informs me, he felt authorized to issue the warrants for refunding scrip to purchasers of these lands, upon the ground of error in their classification.

Had the board of swamp land commissioners legislative powers sufficient to enlarge the act of the legislature of the State before referred to, and to increase the powers of auditor and treasurer, in such a manner as to change their duties, or enlarge them under sections 2 and 3, of act approved 20th January, 1855, in refunding scrip in a different manner from that pointed out by said sections? And by a fair interpretation of these sections of said act, will they admit the power of the auditor to issue warrants upon a land agent's certificate for error in the classification of lands previously entered before the old board of commissioners, or before any land agent of the State; and for the treasurer to pay such warrants, by issue of scrip out of the swamp land fund?

Could the adoption of the ordinance by the board of the 23d September, 1856, effect or change any entry previously made before the board, or any land agent? If the board had power to pass an ordinance that might effect some change in the manner of entering lands, would it have a restrospective bearing in any case, or would it effect only such entries as were made after its adoption, giving to it a prospective operation altogether?

Very respectfully,
your obedient servant,
A. H. RUTHERFORD,
Treasurer of Arkansas.

LITTLE ROCK, 16*th January*, 1857.

SIR—As to the *second* and *third* sections of "an act to enable the Governor to make deeds to swamp and overflowed lands," approved 20th January, 1855, referred to in your communication to me, of this date, there can be no room for doubt or construction. They speak for themselves, and show clearly that no refunding certificate can be granted to any person, except first, where tracts of unconfirmed swamp land are embraced in

the original certificate; second, where land has been twice paid for; and third, where more has been paid than was properly due, in consequence of erroneous estimates of the areas of swamp lands.

These are the only cases embraced by the law, and it must be too clear for argument that the land agents cannot go beyond it. The power and authority of the land agents are prescribed by law, and there is nothing in any act of Assembly that I am aware of which authorises a land agent to grant, or the auditor to draw a warrant on the treasury for difference in the price of first and second class swamp land, or to correct any error in the specific classification thereof; and of course you could neither be expected nor required to pay any warrant, or deliver scrip to the holder under it, because the certificate of the land agent, having been issued without authority, there is no legal basis upon which the auditor's warrant can rest, and it must, therefore, be considered as of the nature of a mere private act.

Certified copies of two ordinances of the board of swamp land commissioners of the 6th of October, 1851, and of the 23d of September, 1856, relating to the classification of swamp lands, were placed before me as part of your official communication, but I do not deem it necessary to make a critical examination of these ordinances now, because whatever powers the board of swamp land commissioners may have had in 1851 or 1856, legislative power was certainly not one of them, nor the power to undo what had been done; and, therefore, these ordinances can have no influence on the question in hand. That board could certainly neither enlarge nor circumscribe an act of the legislature.

If errors have been committed as to the specific classification of swamp lands, the General Assembly is the proper forum for their correction, either by direct action in individual cases, or by vesting adequate power in subordinate officers, as has been done with regard to other cases by the act of 1855, above referred to.

Yours, very respectfnlly,

S. H. HEMPSTEAD,

Solicitor General of Arkansas.

A. H. RUTHERFORD, ESQ.,

Treasurer of Arkansas, Little Rock.

AUDITOR'S OFFICE, *Little Rock*,
February 4th, 1857.

SIR: As auditor of public accounts, I desire your legal opinion upon the following questions arising under the swamp land laws of this State.

In order to present the questions fairly, upon which I wish to obtain your opinion, it will be necessary to call your attention to the action of the board of swamp land commissioners, and the acts of the legislature, touching the matters under consideration.

Under the authority granted by act of 6th January, 1851, the board of swamp land commissioners, on the 14th October, 1851, adopted an ordinance fixing the price of the swamp and overflowed lands donated to this State by act of 28th Septembes, 1850, at seventy-five cents per acre, for all lands within six miles of a "navigable stream," and fifty cents per acre for all lands more than six miles from a "navigable stream," and declared the following streams to be "navigable streams," coming within the purview of the ordinance establishing the price of such lands, to wit: Mississippi, St. Francis, White, Arkansas, Saline, Bartholomew, Ouachita, Little River, Little Missouri, Petit Jean, Cache, Spring, Red and Black rivers.

The legislature, at its session in 1852–53, by act approved January 12th, 1853, declared the price of all swamp and overflowed lands, to be seventy-five cents per acre, for all lands within six miles of a "navigable water course," and fifty cents per acre for all lands being more than six miles from a "navigable water course," but did not designate what water courses should be deemed "navigable water courses," nor how far up the streams, declared navigable by the board of commissioners, should be considered "navigable water courses," for the purpose of determining the value of swamp and overflowed lands.

In September, 1856, the board of swamp land commissioners adopted an ordinance, fixing the points where certain streams, named in the ordinance of 14th October, 1851, ceased to be navigable, as affecting the value of swamp and overflowed lands. The questions I wish to submit to you are the following: "Are the streams mentioned in the ordinance of 14th October, 1851, to be considered 'navigable water courses,' for their entire length in this State, within the meaning of that ordinance, and the act of the legislature? Had the land agents the right to determine at what point any stream ceased to be navigable, with a view of ascertaining the value of swamp and overflowed lands? Had the board of swamp land commissioners in 1856, the power to fix the points where certain streams mentioned in the ordinance of 14th October, 1851, ceased to be "navigable streams?"

What was meant by the term, "navigable water course," as used in the act of 12th January, 1853? Does it mean such

streams as had been so declared by the board of swamp land commissioners, or such as had been so declared by acts of the legislature?

Has the auditor the right, and is it his duty when a certificate of entry of swamp lands is presented to him for the purpose of procuring the necessary certificate, to enable the purchaser to obtain a deed for the lands purchased, to go behind the land agents' certificate of entry to ascertain, by inspecting the books and plats in his office, whether the lands are within six miles of a "navigable water course," and upon such examination, if he discovers that the land has been sold by the agent at a less price than is fixed by law, should he refuse to issue the required certificate?

Very respectfully, your ob't serv't,
WM. R. MILLER, *Auditor*
of Arkansas.

To. S. H. HEMPSTEAD, esq.,
Solicitor General, Little Rock, Ark.

LITTLE ROCK, *February*, 1857.

SIR: The principal question submitted in your letter of the 4th inst., is a difficult one, rather pertaining to fact than to law, and it is to be regretted that it has not been settled by positive legislation.

In substance, the question submitted to me is this: *What is to be understood by the term "navigable water course," used in the swamp land act approved January* 12, 1853? By the 11th section of that act, the price of swamp land, within six miles of a navigable water course, is fixed at seventy-five cents per acre, and swamp land beyond that distance, at fifty cents per acre. This is the minimum. *Acts* 1852, *page* 165.

Navigable water courses and navigable rivers or streams must be construed as synonimous terms, and in an enlarged sense. They have not here the technical meaning assigned to rivers by the law of England. There, the term *navigable*, as applied to rivers, streams, or arms of the sea, meant water effected by the ebbing and flowing of the tide. In other words, it implied tide water, or salt in contradistinction to fresh water. And probably in point of fact, in most cases, the rivers there being comparatively small, their navigability for water craft, did not extend beyond the flux and reflux of the tide, and whereby that very naturally became the technical standard of a navigable or public river.

But in this country, the presence or absence of tide water has nothing to do with the question, as to whether a river, stream or water course is to be considered navigable or not navigable; because, otherwise, the greatest fresh water rivers on this con-

tinent—the Missouri, Mississippi, and their vast tributaries, navigable in fact, thousands of miles beyond the influence of tide water, and none of them, save the Mississippi, having any connection with it at all, might be claimed as private property, or subject to private pretensions, whereas they were designed for public use and convenience, and ever have been held as free to all: here, therefore, a navigable river or water course must be understood to mean a stream of water that is, or may be used for commercial purposes, or as a highway, not merely for steam boats, but for keel-boats, flat-boats, rafts or any other water craft used in river navigation.

The legislature at different periods has declared certain rivers, streams and water courses navigable, with a view, generally, as it appears, of preventing obstructions therein. There does not seem to have been any uniformity in the legislation on that subject; for, sometimes rivers, streams, water courses, bayous and lakes have been declared navigable to certain specified points, for steamboats, and to certain other points for keel-boats, flat-boats, rafts and other water craft. Sometimes the navigable capacity of them has been confined to particular counties. Having taken the pains to hunt up many of these acts, found in scattered pamphlets, I will here refer to them, rather, however, as matters of curiosity, than as having any important or decisive bearing on the question in hand.

The following, embracing rivers, lakes, bayous, creeks, and water courses, have been declared navigable at different periods:

The *Little Missouri* river, from its confluence with the Ouachita, to the three forks of the Little Missouri, in 1829, declared a navigable stream, and a common highway, free to all people, without tax, duty, or impost therefor. *Acts* 1829, *p.* 102.

Bayou Saline declared navigable from the mill-dam of George Hill, to Little River, in 1838. *Acts* 1837, *p.* 68.

Petit Jean river declared navigable in 1842, from its junction with the Arkansas river, to Danville, in Yell county. *Acts* 1842, *p.* 58.

Fourche le Faive river declared navigable in 1844, from its junction with the Arkansas river, to Ephraim Poston's, in Scott county. *Acts* 1844, *p.* 20.

White river declared navigable in 1844, from its junction with the Mississippi, to the mouth of Swan, for steamboats, and from thence to the three forks, for keel and flat-boats. *Acts* 1844, *p.* 33.

Little Red river, from its junction with White river, to the State Salt Spring, in Van Buren county, in 1844. *Acts* 1844, *p.* 40.

Porteau river, with all navigable sloughs, declared navigable in 1846; from its junction with the Arkansas river, at Fort Smith, to Jackson Hann's, in Scott county. *Acts* 1846, *p.* 9.

Antoine river declared navigable in 1846, from its junction

with the Little Missouri river, to the crossing on the military road. *Acts* 1846, *p.* 15.

Buffalo Fork of White river, from its junction with White river, to the mouth of Richland creek, in Searcy county, declared navigable in 1846. *Acts* 1846, *p.* 27.

L'Anguille river, in St. Francis county, from the bridge crossing the same, on the road between Memphis and Little Rock, declared navigable in 1846. *Acts* 1846, *p.* 33.

St. Francis river declared navigable in 1846, from its junction with the Mississippi river, to Maumelle prairie for steamboats, and from thence to the Missouri line, for keel and flatboats. *Acts* 1846, *p.* 34.

Cache river declared navigable in 1846, from its junction with White river, to Capt. John T. Beard's. *Acts* 1846, *p.* 35.

Big Creek declared navigable in 1846, from its junction with White river, to the crossing of the Helena and Little Rock road. *Acts* 1846, *p.* 36.

War Eagle declared navigable in 1848, from Sylvanus Blackburn's, in Washington county, to its junction with White river, in that county. *Acts* 1848, *p.* 24.

Cadron Creek declared navigable in 1848, from its junction with the Arkansas river, to Blake H. Thompson's, on the north branch, and Jonathan Hardin's on the east branch thereof. *Acts* 1848, *p.* 35.

Bayou Metre declared naviagble in 1849, from its mouth, in Arkansas county, to where the Memphis road crosses the same in Pulaski county. *Acts* 1848, *p.* 102.

King's river—so much thereof as runs through the counties of Carroll and Madison, declared navigable in 1850 and 1854. *Acts* 1850, *p.* 19; *Acts* 1854, *p.* 65.

Maddox Bay declared navigable in 1850, from its mouth to the Yellow Banks, in Monroe county. *Acts* 1850, *p.* 25.

Plum Bayou declared navigable in 1853, from its lower junction with the Arkansas river, to William Mason's mill-dam. *Acts* 1852, *p.* 124.

Champagnolle Bayou declared navigable in 1853, in the county of Calhoun. *Acts* 1852, *p.* 199.

The act declaring Plum Bayou navigable was repealed in 1854. *Acts* 1854, *p.* 82.

I do not find any act declaring the Ouachita river navigable, but by an act of the 9th December, 1856, it was provided that an act declaring the Ouachita river, in Montgomery county, a navigable stream, was thereby repealed. *Acts* 1856, *p.* 19.

The act declaring King's river, in Carroll county, a navigable stream, was repealed on the 15th December, 1856. *Acts.* 1856, *p.* 22.

There may be other acts and other repeals which have escaped my notice.

In most if not all these acts, obstructing the navigation of

the rivers, streams, creeks, bayous and lakes, thus legislated about, was made an indictable misdemeanor, subject to fine on conviction, and the circuit courts, in counties where the obstructions occurred, were required to give the acts in charge to the respective grand juries therein.

It may not be out of place to remark, that many of the waters thus declared navigable to certain points, are well known to be not in fact navigable for any water craft whatever.

I cannot think the legislature ever intended that the various special and fugitive acts, declaring streams navigable, many, if not all of them, probably remedial of some threatened or existing local evil—passed at one session, and modified or repealed at the next, should be the navigable water courses referred to in the law fixing the minimum price of swamp lands. I do not believe that was the standard the legislature had in view, or meant to establish.

Doubtless the legislature could rightfully declare any water course, however inconsiderable or insignificant, navigable from mouth to source, for the purpose of fixing the price of swamp land upon, or in any given number of miles of it, if that body felt disposed to do so. Having full power to establish the price of confirmed swamp land, and to sell, it, or withhold it from sale, no one can doubt that the legislature might lawfully declare, that all confirmed and unsold swamp lands, situate on, or within any given number of miles of any water course, declared navigable by any act of the legislature, should not be sold for less than seventy-five cents per acre. But I do not think the legislature has yet done so, and, considering the impolicy of such a step, probably never will. Of course, the legislature can never make a stream navigable in fact, which is not so by nature, and as to whether a water course is, or is not navigable, must of necessity, be a question of fact and not of law at all.

The result of establishing this criterion at present, would be, that no other streams than those declared navigable, could be referred to as fixing the price of swamp land. That would exclude our principal rivers, which, although in fact navigable for steamboats, and all manner of water craft, and used for commercial purposes by the public from time immemorial, yet never have been, nor was it necessary they should be declared navigable rivers, namely, the Arkansas river, Red river, Ouachita river, Black river, Spring river, and other rivers of large class, on which, probably the greatest portion of swamp land is situated. And, indeed, the Mississippi river itself would be excluded. We may, therefore, with perfect safety, reject that standard as one never adopted by the legislature.

The public surveys of the United States would furnish a better, though an imperfect guide.

Under the laws of the United States, those who survey the

public lands, are required to do so in square figures, or sections when practicable—to meander such rivers, streams or lakes, as are not conveniently passable, as well as inaccessible swamps, and to close the surveys upon them.

Where this duty has been carefully and judiciously performed, the surveys returned, carried into plats in township order, and approved by the proper authorities, they may most probably afford the best standard of navigable water courses that could be had, and if the policy of discriminating in the price of swamp land is to become permanent, might be worthy of adoption by the legislature, not as perfect, but as approximating nearer certainty and uniformity than any other.

It admits of no question, that the duty was sometimes negligently performed, and streams, rivers, and lakes meandered in making the public surveys which were not then, and are not now navigable for water craft, to points where meandering ceased. And, inacessible swamps were meandered, not navigable in any sense whatever. Whilst, however, in practical operation, it would give rise to some inequalities, it would probably present the fairest standard that could be adopted by the legislature. But not having been adopted, it must at present be rejected, whatever may be its merits or demerits.

By the swamp land act of the 6th January, 1851, (*Acts* 1850, *p.* 77,) the governor was authorized and required to appoint three competent persons, to be known and to act as the board of swamp land commissioners.

Power was given, and it was expressly made the duty of the commissioners to fix the price of swamp and overflowed lands, donated to this State by the act of Congress of the 28th of September, 1850; in their then condition, taking into consideration the locality and the value that would be added to such lands, by their reclamation, subject to the approval of the governor. Three commissioners were appointed in accordance with the law, who duly qualified as such.

On the 2d of September, 1851, in the exercise of the authority thus delegated to them, the board of swamp land commissioners passed and promulgated the following ordinance, viz:

Be it ordained by the Board of Swamp Land Commissioners, That all that portion of the swamp lands donated to the State of Arkansas, by an act of Congress, approved the 28th day of September, 1850, lying and being within six miles of any navigable stream in this State, shall be, and they are hereby, classed in the *first class*, and the price fixed at *seventy-five* cents per acre.

Be it further ordained, That all swamp land, lying and being over six miles from any navigable stream in this State, and all lands between the rivers and levees, are hereby classed in the *second class*, and the price thereof fixed at *fifty cents* per acre.

Be it further ordained, That the following named streams, running through and bordering upon this State are hereby declared navigable streams, as coming within the purview of this order, viz: Mississippi, St. Francis, White, Arkansas, Bartholomew, Saline, Ouachita, Little River, Little Missouri, Petit Jean, Cache, Spring, Red and Black rivers.

This ordinance is understood to have received the approval of the governor (John Selden Roane) and it was communicated by him to the legislature at the session of 1852, and will be found in the printed report of the commissioners on page 20.

On the 27th of November, 1852, the governor (Elias N. Conway) in a message to the legislature set out this ordinance in *hæc verba;* calling special attention to it as a subject of sufficent importance to be definitely settled by an act of the legislature. The recommendation however was not followed further than to enact, among other things, in a general manner, that "the minimum value of all swamp and overflowed lands which are not sold at public sale should be seventy-five cents per acre for all lands, *within six miles of a navigable water course*, and fifty cents per acre for all lands being more than six miles from a navigable water course." This act was approved on the 12th of January, 1853. *Acts* of 1852, *page* 165.

It will be seen that the act substantially adopts the language of the ordinance, and considering all the attending circumstances must, as I think, be regarded as a recognition and confirmation of the ordinance, as fully as if it had been actually incorporated into the law itself.

The commissioners had the authority to thus fix the price of swamp lands. They did so by declaring, in substance, that within six miles of certain streams, specified by them, seventy-five cents should be the minimum, and at a greater distance, fifty cents per acre for swamp land. Their action having been approved by the constituted authorities, was brought to the special notice of the legislature, and there being no dissent or the establishment of any new system, the presumption is almost irresistable, that in using the term "*navigable water course*," the legislature intended to embrace those streams so declared navigable by the ordinance of 1851, for the purpose of classifying and fixing the price of swamp lands, and under which ordinance the board and others had acted.

Therefore the act of the legislature, of 12th January, 1853, must be construed as a legislative adoption of that ordinance, and the term "navigable water course," as meaning such streams as had been so declared in the ordinance, and above mentioned.

And for the purpose of classifying and fixing the minimum price of swamp lands, it seems to me that the streams mentioned in that ordinance must be considered as navigable water courses, for their entire length in this State, whether actually

navigable or not. And I arrive at this conclusion, because, while I am mindful, that the discrimination in the price of swamp land was most prcbably based on the idea that land proximate to streams capable of and used for the purposes of commerce and navigation, were more valuable than lands not near enough to be directly effected by these advantages; yet it is also true that the difference between the minimum on the one class and the other is small, and not very material; and it is also true that the importance of having a certain and definite standard, for the land officers, State officials and the public, would far outweigh any considerations of loss or gain in regard to lands on streams, above the point of navigation. It was quite as necessary to have a certain standard, although arbitrary it might be, as it was to have a minimum price for the land. To leave the actual navigableness of these streams to be settled in each case as a question of fact would have produced the utmost confusion and uncertainty. Decisions based upon imperfect or interested testimony, must have been different at different times, and different at different offices.

It is therefore reasonable to suppose that it was thought better to demand seventy-five cents per acre for swamp land on or near a stream above the point of actual navigability, than to have a shifting standard of value, or rather a standard wholly uncertain. For while on the one hand occasional individual hardships might be produced in the practical workings of the system, yet they were more than compensated on the other by certainty and public convenience. And I cannot help thinking the public interest would be promoted, if the legislature should establish a uniform minimum for swamp land in imitation of the land system of the general government.

No change having been made in that ordinance, it remains the rule of action, and the result is that the land agents have no right to determine at what points the streams therein named cease to be navigable, in view of the price or classification of swamp lands. Nor had the board of commissioners in 1856, any right or authority to fix points on those streams where they ceased to be navigable. They had no more power to do it than they had to modify or repeal an act of the legislature. Hence the ordinance of the 23d of September, 1856, passed by the late board of swamp land commissioners, referred to in your letter, is of no validity whatever.

I believe this answers all your questions except the last.

As to that, I have to say, that the auditor must be considered as the head of the land department, answering in many respects to the commissioner of the general land office of the United States. I think there can be no question, that if a land agent sells swamp land at a less price than that fixed by law, the sale being an entirety is void, and the auditor could not issue a certificate to enable the purchaser to obtain a deed. The auditor

must have the right to go behind the certificate of the land agent, for the purpose of ascertaining whether lands are within six miles of the streams above spoken of in the ordinance of 1851, or not, and if his office furnishes the record evidence of that fact he must act accordingly. If he could make no inquiry behind the certificate, and was absolutely bound by it, the result would be that although the land agent had violated the law, the auditor would have to become an instrument in that violation: in a word he would have to register the edicts of the land agents. Such a doctrine is wholly inadmissible. Suppose a land agent should sell a tract of land and grant a certificate for it, when the same land had been previously taken up by pre-emption or previously sold, and that fact appeared on the books of the auditor's office, does any one imagine the auditor could not go behind the certificate; or that he would have the right or the power to regard the certificate as valid and act on it as such?

It frequently happens that public lands of the United States are entered when the law does not allow it, and in such cases the practice has been uniform, not only to withhold a patent but to set aside the entry itself. This is done by the commissioner of the general land office, and that has been sanctioned over and over again by judicial decisions. This is an analagous case and will suffice without going farther into the subject.

I might have answered your questions briefly and categorically, and with less trouble to myself than I have taken. But as most of the questions pertaining to the swamp lands are not only difficult in themselves, but new and unsettled, it has been more satisfactory to me to go somewhat at length into the subject, and give my ideas upon it. It is easy to raise plausible objections to almost any opinion that may be pronounced about the swamp lands, and the main one here involved, I am free to say, runs very nearly into one of fact. In conclusion I will not forego the opportunity of adding that it is a subject demanding legislation.

Very respectfully, your ob't serv't,

S. H. HEMPSTEAD,
Solicitor General of Arkansas.

WM. R. MILLER, esq.,
Auditor of Arkansas.

INSTRUCTIONS OF THE AUDITOR.

AUDITOR'S OFFICE,
Little Rock, Feb. 28th, 1857.

MR. EDITOR—As frequent inquiry is made at this office for information in regard to the necessary steps to be taken to secure pre-emption rights, under the 14th section of the supplemental swamp land act, approved 13th January, 1857, you will please publish the following circular of instructions and accompanying forms, for the benefit of those interested, and oblige,

Yours respectfully,
WM. R. MILLER.

SIR—Annexed is a copy of that portion of an act of the General Assembly of the State of Arkansas, entitled "an act supplementary to an act passed at the present session of the General Assembly, entitled 'an act to arrest in part the operations of the present laws upon the subject of the swamp and overflowed lands,'" approved 13th January, 1857, which has relation to the subject of pre-emptions. Your attention is particularly called to the provisions of said act, and your observance enjoined of the rules prescribed by the auditor of the State of Arkansas.

The individual claiming the benefits of said act must be, 1st. A free white person, a resident of the State of Arkansas, over the age of twenty-one years. 2d. A resident upon the tract sought to be entered, or must have commenced the work of reclamation upon the tract, or must have commenced cultivating said tract, with a view to its reclamation; and 3d. Must file in the land office of the district in which the land lies, within thirty days after the commencement of such reclamation, his or her declaration in writing, setting forth the fact that he or she has begun the work of reclamation, on said tract of land, to be described in the declaration, and claims the same as a pre-emption right under the provisions of the act above referred to, which declaration must be verified by affidavit.

(See forms A and B, hereto annexed.).

(Where the tract claimed as a pre-emption under this act has been reported by the locating agents as swamp and overflowed land, but is unconfirmed, or is confirmed, and not subject to sale at private entry, the party claiming the right of pre-emption, will have to present the proof required by this act; to the auditor, procure his certificate, and complete his entry, at the proper land office, before the day designated by the land agent, for the offering of said land at public sale. Should the claimant fail to make such proof and entry, before the day set apart

for such sale, his right of entry will be lost and the land will be offered for sale.) *

Where the land has been confirmed and is subject to be sold at private sale by the land agent, he shall comply with the provisions of this act, and complete his entry within twelve months from and after filing his declaration.

A person who has once availed himself of the provisions of this act, and has entered one hundred and sixty acres under it, cannot, at any future period, or at any other office, acquire another right under it.

The pre emptor who files his declaration for one hundred and sixty acres must reclaim and enter it all, and cannot enter a part of the tract claimed. However, he may file his declaration to hold eighty or forty acres, but in all cases his proof and entry must relate to all the tract claimed.

Where two or more persons, at the date of the law, resided on the same quarter section, the land agent will divide the tract between them, by a north and south or east and west line, so as to give to each party his or her improvement.

No assignments of pre-emption rights under this act are allowed.

The declaratory statements required to be filed under this act, are to be regularly numbered by the land agent, in the order of the date of their reception, and entered in a suitable book, columned off, to show the number, date when received, name of the party, and description of the land claimed; and quarterly abstracts of the same are to be furnished to this office, with the agent's quarterly returns.

The existence of these claims must be indicated on the plats by making, with red ink, a cross, (⋈) on the spot occupied by the tract claimed; and also, with red ink noting on the same spot the number of the declaratory statement in very small figures.

The foregoing instructions, it is believed, will embrace the generality of cases presented to you, but exceptional cases may occur, in which new points may have to be decided. In such cases you will carefully examine the law bearing on the subject, and decide accordingly.

It may be represented to persons that the process of obtaining pre-emptions under this act is very difficult; therefore to enable the poor man, for whose benefit this law was intended, to avail himself of its advantages, you will afford him every facility in your power and explain to him what will be required to secure his pre-emption, should it be found that he is entitled thereto.

Very respectfully your obd't serv't,

WM. R. MILLER,
Auditor of Arkansas.

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* That portion of the above instructions, *included in parenthesis*, has been modified. See instructions of 15th May, 1857.

SEC. 14. That any person who resides on, or who may hereafter reside on, reclaim or cultivate any of the swamp or overflowed lands which may be confirmed to the State, shall have a pre-emption right to one hundred and sixty acres, to be proved up according to existing laws, and it shall be lawful for such person to make such levees, drains or ditches as are or may be necessary to thoroughly reclaim such land, and render it fit for cultivation; and on presenting the certificate of the county surveyor of his county, supported by the affidavit of two disinterested citizens of such county, that said land is actually and permanently reclaimed by such levees, drains or ditches, together with the actual value thereof, to the auditor, he shall give such person a certificate of the value of such reclamation, which shall be received by the land agent of the proper district in payment of such land; *Provided*, The cost of such reclamation does not exceed the price of such land at the price per acre now established by law; *And provided further*, That such certificate shall not be assignable.

Affidavit of Citizens to Reclamation, under the 14th Section of the act approved 13th January, 1857.

THE STATE OF ARKANSAS, } *ss.*
COUNTY OF ———, }

We ——— and ——— citizens of ——— county, Arkansas, over the age of twenty-one years, do solemnly swear that we have made a personal examination of the ——— made by ——— to reclaim the ——— quarter of section ——— in township ——— of the base line, in range ——— of the fifth primcipal meridian, and we find that said tract of land is actually and permanently reclaimed by such ——— and that the actual value of such reclamation according to our best judgment is ——— dollars.

Sworn to and subscribed before me, this ——— day of ——— A. D. 185—.

——— ———, J. P.

A——— B———
C——— D———

THE STATE OF ARKANSAS, } *ss.*
——————— COUNTY. }

I ——— Clerk of the circuit court and ex-officio clerk of the county court, in and for the county of ——— do hereby certify that ——— before whom the above affidavit was taken, was at the time, and still is an acting and duly commissioned

justice of the peace, in and for —— township, in the county of ——— in the State of Arkansas, and that full faith and credit are, and of right ought to be given to all his official acts as such.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of my office at ——— within the county and State aforesaid, this —— day of ——— A. D. 18——.

———————, *Clerk.*

County Surveyor's certificate, under the 14th section of the Act approved 13th January, 1857.

THE STATE OF ARKANSAS, }
COUNTY OF ——— }

I, ——— County Surveyor for the county of ——— duly elected, commissioned and qualified as such, do hereby certify that at the instance and request of ——— did, on the —— day of ——— 185—, make a personal examination of the ——— quarter of section —— in township —— of the base line in range ——— of the fifth principal meridian, containing ——— acres, which said tract of land has been actually and permanently reclaimed by the said ———, by the ——— and that the actual value of such reclamation, according to my best judgment is ——— dollars.

Given under my hand at ——— county in the State of Arkansas, this —— day of ——— A. D. 185—.

———————, *County Surveyor for the county of* ———

Declaratory Statement in cases under the 14th section of the Act approved 13th January, 1857.

STATE OF ARKANSAS.

LAND AGENT'S OFFICE AT }
——— *Ark.*, ——— 185–. }

I, ——— of ——— county, Arkansas, being —— and a resident of the State of Arkansas, did, on or about the —— day of ———, 185—, ——— the —— quarter of section —— in township No. —— of range No. —— in the district of lands subject to sale at the land office at ——— and containing —— acres of swamp and overflowed land, which is (*now or not as the case may be,*) subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of an act of the General Assembly of the State of Arkansas, entitled "an act supplementary to an act passed at the

present session of the General Assembly, entitled 'an act to arrest in part the operations of the present laws upon the subject of the swamp and overflowed lands,"' approved January 13th, 1857.

Given under my hand this —— day of —— 185—.

In presence of

I, ———, claiming the right of pre-emption, under the provisions of the act of the General Assembly of the State of Arkansas, entitled "an act supplementary to an act passed at the present session of the General Assembly, entitled 'an act to arrest in part the operations of the present laws upon the subject of the swamp and overflowed lands,"' approved 13th January, 1857, to the ——— quarter of section ——— in township —— of the base line, in range —— of the fifth principal meridian, containing —— acres, being a portion of the swamp and overflowed lands granted to the State of Arkansas, by act of Congress, approved 28th September, 1850, in the district of lands subject to sale at the land office at ———, do solemnly swear that I have never had the benefit of any right of pre-emption under the act above referred to—that I have ——— in good faith to appropriate it to my own exclusive use and benefit, and not in trust for another, or with a view to speculation, and the pre-emption applied does not include the improvement of any other person.

Sworn to and subscribed before me ——— this —— day of ———, 185—.

LAND AGENT'S OFFICE AT ———, *Ark.*, ——, 185—.

I, ——— of ——— county being ——— and a citizen of the State of Arkansas have since the —— day of ——— 185—, ——— the ——— quarter of section —— in Township —— of range —— containing ——— acres of *swamp and overflowed lands*, subject to ——— at ———; and I hereby declare my intention to claim said tract of land as a pre-emption right under the provisions of the act of the General Assembly of the State of Arkansas, entitled "an act amendatory of existing laws regulating the landed interest of this State," approved 12th January, 1853, and of an act of said General Assembly, entitled "an act to be entitled an act to prevent the advertising and withhold from sale certain swamp and overflowed lands," ap-

proved 27th November, 1854, and of "an act to amend section eleven of an act entitled an act amendatory of existing laws, regulating the landed interest of this State," approved twelfth January, eight hundred and fifty-three, approved 16th January, 1855.

ATTEST, _____

I, _____ claiming the right of pre-emption under the provisions of the act of the General Assembly of the State of Arkansas entitled "an act amendatory of existing laws regulating the landed interest of this State," approved 12th January, 1853, and of an act of said General Assembly, entitled "an act to prevent the advertising, and withhold from sale certain swamp and overflowed lands," approved 27th November, 1854, and of "an act to amend section eleven of an act entitled an act amendatory of existing laws, regulating the landed interest of this State," approved 12th January, 1853, approved 16th January, 1855, to the _____ quarter of section _____ in township _____ of the base line, in range _____ of the fifth principal meridian, containing _____ acres, being a portion of the swamp and overflowed lands granted to the State of Arkansas by the act of Congress approved 28th September, 1850, and subject to sale at the state land office at _____ do solemnly swear, that the pre-emption above applied for, together with the pre-emption of _____ acres already obtained, under the acts above referred to, will not amount to more than one hundred and sixty acres; that I have _____ said land in good faith to appropriate it to my own exclusive use and benefit, and not in trust for another or with a view to speculation, and the pre-emption applied for does not include the improvement of any other person.

Sworn to and subscribed before me this _____ day of _____ A. D. 185—.

_____

Land Agent _____ *District.*

We _____ and _____ citizens of _____ county, Arkansas, over the age of twenty-one years, do solemnly swear that the above named _____ the _____ of section, No. _____ of Township No. _____ of range, No. _____ on, or about the _____ day of _____, 185—; and that he has about _____ acres in _____ and that we are not directly or indirectly interested in the right of pre-emption claimed by the said _____.

_____
_____ } *Witnesses.*

Sworn to and subscribed before me, this _____ day of _____ A. D. 185—.

_____

Land Agent, _____ *District.*

OPINION OF SOLICITOR GENERAL.

EXECUTIVE OFFICE,
LITTLE ROCK, ARK.,
4th March, 1857.

SIR—In paying contractors for work done by them under contracts entered into before the change in the swamp land districts of the State of Arkansas, by the acts of 30th December, 1856, and 13th January, 1857, will the scrip issued to them be subject to be received in payment for swamp lands situated in any part of the districts in which the work was to be done, according to the limits of the districts as they existed when the contracts were made, or will the scrip, regardless of such contracts, be confined to the districts as reduced and established by the act of 30th December, 1856?

For the government of the various officers who have to act in the premises, you will be pleased to furnish me, as early as convenient, your legal opinion in answer to the foregoing question.

Very respectfully, your ob't serv't,
ELIAS N. CONWAY.

Gen. SAM'L H. HEMPSTEAD, *Solicitor General of Arkansas, Little Rock, Arkansas.*

LITTLE ROCK, *5th March*, 1857.

SIR—The question propounded in your letter of the 4th inst., is as follows, viz:

"In paying contractors for work done by them under contracts entered into before the change in the swamp land districts of the State of Arkansas, by the acts of 30th December, 1856, and 13th of January, 1857, will the scrip issued to them be subject to be received in payment for swamp lands situated in any part of the districts in which the work was to be done, according to the limits of the districts as they existed when the contracts were made, or will the scrip, regardless of such contracts, be confined to the districts as reduced and established by the act of 30th December, 1856."

By the first swamp land law, approved 6th January, 1851, (acts 1850, p. 77) the commissioners were authorized to make contracts for levee work and to pay contractors, either by issuing to them land scrip, representing quarter section tracts, or the contractors might receive pay in the land reclaimed. If scrip was issued, it was provided that it should be transferable by assignment. and located upon any of the unselected portion of the swamp lands.

As to contracts made after the 12th January, 1853, scrip issued in discharge thereof, for levee work, was confined to the district in which such work was done and could not be located beyond it—thus arresting a monstrous evil which had sprung out of the first law, which was, that on work done in one part

of the State the swamp lands in another were taken up, and thus preventing general reclamations. Acts 1852, p. 161.

It was an essential part of the contract, that for levee work done the contractor should have the right to locate the scrip issued to him on swamp land in the district where the work was performed; or that his assignee might do so. It was one of the considerations of the contract, of no inconsiderable importance, and no doubt, in many cases, furnished the chief motive and inducement to enter into those contracts.

Such being the case, the acts of the last session of the legislature, referred to in your letter, could not restrict and confine the scrip on such contracts to the new districts, without impairing their obligation and becoming to that extent unconstitutional. Nor do I think these acts attempted it. After a careful examination of them, it seems plain to me that they are prospective in their operation, and are not intended to apply to past contracts. I am, therefore, of the opinion that the scrip issued upon contracts made prior to the acts of the last legislature is *locatable* in the district as it existed at the time the contract was made.

Very respectfully, your ob't serv't,
S. H. HEMPSTEAD,
Solicitor General of Arkansas.

His Excellency, ELIAS N. CONWAY, *Governor of Arkansas*,
Little Rock, Arkansas.

INSTRUCTIONS OF AUDITOR.

AUDITOR'S OFFICE, LITTLE ROCK,
April 22d, 1857.

SIR—In all certificates of purchase hereafter issued by you, for entries of swamp and overflowed lands, you will state in the *body* of the certificate how the land was paid for; whether in cash or swamp land scrip. Cash once received by you in payment for land is the money of the State, and cannot be exchanged for or replaced with scrip.

Yours respectfully,
W. R. MILLER, *Auditor of Arkansas.*

Land agent at ————————.

OPINION OF SOLICITOR GENERAL.

LITTLE ROCK, *May 11th*, 1857.

SIR—The case as put it your letter, and which you desire my opinion is as follows:

"A person purchased a tract of swamp and overflowed land, "within six miles of a navigable stream, [as declared by the ordi-

"nance of the board of swamp land commissioners of 6th of "October, 1851,] at this office whilst it was being governed by "the ordinance of the said board, of the 23d of September, "1856, and paid only fifty cents when he should have paid sev- "enty-five cents per acre. He refuses to pay the twenty-five "cents per acre still legally due the State, alleging that the land "is not worth more than fifty cents per acre. He says rather "than pay more for the lands, he will, if he can, surrender to "the State his title to the same, and have the scrip he paid for "it refunded. Can he do so? If he cannot, what action must "be taken?"

In the opinion given by me in February, 1857, and which has been published in most of the newspapers of the State, certain streams declared navigable by the ordinance of 1851, were so considered for the purpose of classifying and fixing the price of swamp lands, whether such streams were actually navigable or not. And of the entire correctness of that opinion I entertain no doubt, and I believe it has become the rule of action in swamp land cases, in the departments here.

A purchaser not having paid the amount the law required, could not obtain the final title, because the auditor seeing that a sale had been made in contravention of law, would be bound to refuse the certificate on which the deed from the Governor is predicated. Nor would the Governor be authorized to make a deed where full payment had not been made, and would doubtless decline doing so, in all cases where the fact came to his knowledge. I would suppose, therefore, it would be the interest of a purchaser to complete the payments, in order to obtain the legal title, he having in any event only an equitable title until the deed from the State is made to him in form. But, however this may be, it is quite clear that he cannot obtain a full and complete title until full payment is made.

In the case put by you, I apprehend the person would be bound to pay the full amount of the price fixed by law—whether the swamp land was actually worth it or not. That is a matter of no importance. By offering to purchase, he of course agreed to give seventy-five cents per acre for any lands within six miles of a navigable water course, selected and confirmed as swamp lands. That was the law, and that was the proposition made by him, and accepted by the State. And if a certificate is granted by the land agent which is not conformable to law, it can hardly be thougnt that the purchaser can obtain or should have a title in form.

If a party refuses to make further payment the State would not be without remedy. She might obtain the possession of the lands by an action of ejectment, or after having given a party a reasonable opportunity to make full payment, she might treat the sale as null and void, and sell the same lands to another.

There is no law at present that would authorize the scrip

paid in to be refunded, or a refunding certificate to be granted, in case the purchaser should refuse to make full payment, but he would have to apply to the legislature for relief, and no doubt under such circumstances the legislature would provide a general law applicable to such cases, authorizing the scrip paid to to be refunded, especially where the mistake arose from the imprudent and unwarrantable ordinance of the swamp land commissioners of 1856.

Very respectfully,
your obedient servant,
S. H. HEMPSTEAD,
Solicitor General of Arkansas.

J. M. KILLGORE, esq.,
Land Agent, Washington, Ark.

INSTRUCTIONS OF AUDITOR.

AUDITOR'S OFFICE,
Little Rock, May, 19, 1857.

SIR—Instructions regarding the mode of securing pre-emptions to the swamp and overflowed lands, under the 14th section of the supplemental swamp land law, passed at the late session of the General Assembly, were heretofore sent to you from this office, together with the necessary forms for applications, declarations, affidavits and proof, and it was then thought that they would, with the forms heretofore furnished your office, under the general swamp land pre-emption laws, be sufficient to enable you to transact all business connected with pre-emptions, as well as to inform others of the proper steps to be taken to secure them. But, inasmuch as there appears to be different opinions as to the correct construction of the several pre-emption laws, and as the auditor, after a thorough study of the various pre-emption laws, and a more careful analysis of all the provisions of the supplemental swamp land law, has become satisfied that a too rigid construction was given to the 14th section of the last mentioned act, tending to render it inoperative, it is deemed proper to issue the following general instructions:

The act of the General Assembly of this State, approved 12th January, 1853, provides as follows:

"SEC. 10. That every head of a family who may hereafter settle upon, or who is now a settler upon any of the undisposed swamp and overflowed lands, shall have a pre-emption right thereto, in exclusion of all persons whatsoever, up to the day of such sale, and shall have a right to enter any of the legal subdivisions as above recited; *Provided*, That no right under this section shall vest in any individual except an actual settler upon a portion of the lands claimed, or whose improvement may extend from his own lands to a portion of the swamp and

overflowed lands. But if such settler fail to make such entry before the day set apart for such sale, then the right of entry shall be lost and the lands offered for sale to the highest bidder, and it is hereby made the duty of the land agents, in their advertisements, to notify pre-emptors of their rights under this act.

"SEC. 11. That any head of a family, or other free white citizen of the State over the age of twenty-one years, who shall make a settlement on any of the swamp and overflowed lands after the day of sale, which remain unsold, and who shall within thirty days after the time of such settlement file their declaration in writing, setting forth the fact that they claim said tract of land to be described in the declaration, as a pre-emption right under the provisions of this act, with the land agent of the district in which such lands are, shall be entitled to a pre-emption right for the term of twelve months after the date of such settlement, and shall have a preference right to enter the same in any legal subdivision as above designated, not to exceed one hundred and sixty acres, at the minimum value of all swamp and overflowed lands which are not sold at public sale, which is hereby declared to be seventy-five cents per acre for all lands within six miles of a navigable water course, and fifty cents per acre for all lands being more than six miles from a navigable water course."

These two sections do not conflict with each other, nor does one repeal the other, as has been supposed, but each is to be taken and construed independently of the other.

And in arriving at this conclusion, the auditor is warranted by the history of the passage of said act, as shown in the journals of the General Assembly. Section 11 was offered as a substitute for section 10, but was finally modified and adopted as a separate section, to confer the benefits of the act on another class of persons, and to extend it to another class of lands.

Section 10 provides only for the head of a family who is, or may be, a settler upon unoffered lands, and requires that payment shall be made therefor, before the day when they may be offered for sale.

Section 11 provides for a pre-emption on lands after the day of sale, extends it to all free white citizens of the State, and gives them twelve months in which to complete their proof and payment. By the act of January 16th, 1855, said eleventh section was so amended as to give the head of a family, or other free white citizen of the State, over the age of 21 years, having an improvement, the same kind of pre-emption to lands not then confirmed, or offered for sale as to those subject to sale, and allowing them twelve months to perfect their claim.

But by reference to the 12th section of the act of the 13th January, 1857, you will see that all pre-emptions, (except those under the 14th section, as hereinafter stated) on lands not yet

offered for sale, are required to make proof and payment within sixty days from the date of the notice given by the land agent.

The declaratory statements of pre-emptors must be filed in your office, numbered, the plats marked with a cross in red ink (unless proof and payment are made on the same day, when the marking of the entry on the plat will be sufficient,) as heretofore instructed, and a register kept of the number, date, name of pre-emptor, and the tract of land claimed.

A copy of this register should be transmitted to this office, with your quarterly returns.

Within the time prescribed by law, that is to say, within sixty days from the date of the land agent's notice, (except cases under the 14th section of the act of 13th January, 1857,) or if the lands are now subject to private sale, within one year from the date of the filing of the declaration, the party must prove up his or her pre-emption before you, pay the minimum price therefor, which is seventy-five or fifty cents, according to its proximity to certain streams declared navigable, and receive a certificate of entry.

No proof is made before the auditor. The 14th section of the act of 1857, only requires that the certificate of the county surveyor, supported by the affidavits of two citizens of the same county shall be presented to him, to enable him to audit the claim for cost of reclamation.

In taking pre-emption proofs, be careful to have the points required by law, established by two competent and credible witnesses.

The fact of citizenship, the extent and character of the improvement, and other things connected with it must be fully set out. Avoid letting the witnesses state general conclusions, but require them to state in what the improvements consist, of the buildings, if any erected, of the number of acres cleared, fenced, or in cultivation, etc. Of course, a great deal must be left to your discretion, and you will have to decide upon the competency and credibility of the witnesses. Where you have reason to suspect fraud, you may require more witnesses to prove the pre-emption.

The meanings of the terms "improvement" and "settlement," are variously defined at the different offices.

An "improvement" is work done on the land to render it more valuable or more easily reduced to cultivation, such as clearing, fencing, ploughing, etc., etc., nor does it make any difference whether this is done in person or by agent, so that the pre-emptor is truly and in good faith the owner of such improvement.

An actual residence on the land is the highest evidence of a "settlement." There may, however, be a settlement without a residence upon the land. Thus, a single man may board on

another tract, yet settle and cultivate one contiguous, or a man may settle upon a tract and cultivate it by the labor of slaves, or hired men who reside on it, while the owner of the settlement does not.

Where a regular quarter section contains a few more than 160 acres, you will permit the pre-emptor to take the whole tract. In case of a quarter section on the north or west side of a township, which contains much more than 160 acres, you will find them usually divided into lots. If the pre-emptor desires it, you will allow him to take a number of these lots, forming a compact body as will make the nearest approach to 160 acres.

You cannot sell or permit a pre-emption to any part of a fractional tract unless it is subdivided on your plats.

Where there is only half or the quarter of the quarter section which is swamp land, and the party desires to pre-empt 160 acres, you will permit him to take another vacant half or quarter quarter section adjoining (if swamp land,) so as to make 160 acres, forming a compact body. Remember that touching at the corners simply, is not adjoining.

A pre-emption can be taken to less than 160 acres, if the party prefers to do so.

As indicated in the outset of these instructions, the auditor has thought proper to place a different construction upon the 14th section of the act of 13th January, 1857, to that heretofore given by him, as applied to pre-emption claims on lands not yet offered at public sale. By so modifying his former instructions, as to give to all persons claiming pre-emptions under that act, twelve months to complete their work of reclamation, and to make proof and payment as required by law, as well upon lands not yet offered at public sale, as upon lands now subject to private entry, the auditor believes he would be more fully carrying out the spirit of the law, and the intention of the legislature in passing it.

After a careful study of that act, he is satisfied that the provisions of the 12th section of the act, requiring all lands to be offered at public sale, that are not entered by pre-emption within sixty days from the date of the notice of confirmation by the land agents, applies only to pre-emptors under the other pre-emption laws, where the party intends to pay in *money* or *swamp land scrip*, and not to claims under the 14th section, which are to be paid for by reclamation.

You will, therefore, be governed in your action under this act, by the construction given to it in these instructions. You will not offer at public sale any land claimed as a pre-emption under the 14th section of this act, where the party has taken the necessary steps to notify you of the existence of his or her claim.

You will observe that the following are the main provisions of the several pre-emption laws, viz:

1st. The individual claiming the benefits of the 11th section of the act of 12th January, 1853, must be the head of a family or a free white citizen of this State, over the age of twenty-one years—must have a settlement upon the land claimed, and must make proof and payment within twelve months from the date of his or her settlement.

2d. A pre-emptor under the act of the 16th January, 1855, must be the head of a family, or a free white citizen of the State, over the age of twenty-one years—must be the owner of an improvement on the land claimed—must file his declaratory statement in the office of the proper land district, and make proof and payment within sixty days after the lands are advertised by the land agent.

3d. A pre-emptor, under the 14th section of the act of 13th January, 1857, must be a free white person, a resident of this State, over the age of twenty-one years, must reside on the land, or have commenced reclaiming the land, or cultivating it with a view to its reclamation; must file in the land office of the proper district, his declaratory statement, in the manner heretofore prescribed, within sixty days from the date of the notice required to be given by the land agent, and must make proof and payment, within twelve months from the time of filing his or her declaration.

Yours respectfully,

W. R. MILLER,

Auditor of Arkansas.

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